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Volume XI.

(EVIDENCE FOR DEFENDANTS.)
(EVIDENCE FOR COMPLAINANT IN REBUTTAL.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 820 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

No. 993—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
Defendants.

EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

Volume XI.—Defendants—Complainant's Rebuttal—General Index.

INDEX OF WITNESSES AND EXHIBITS IN VOLUME II.

(For complete index see end of this volume.)

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George J. Gould	8253	4952
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Frank W. White (3)	8265	4960
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Charles H. Tweed	8292	5057
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EXHIBITS.

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" " 219	8337	5083
Order that defendants complete taking of their testimony by April 1, 1910	8341	5085

[a] Separate volume of exhibits.

8145 ROOM 720, CUSTOM HOUSE, NEW YORK CITY,
Monday, March 28, 1910—10.30 a. m.

The parties by their counsel appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. Peter F. Dunne, Mr. N. H. Loomis.

Upon request of Mr. Dunne, an adjournment was taken till the morning of Tuesday, March 29, 1910, at 10.30 o'clock.

ROOM 720, CUSTOM HOUSE, NEW YORK CITY,
Tuesday, March 29, 1910—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. Peter F. Dunne, Mr. N. H. Loomis.

C. S. STEBBINS,

recalled as a witness on behalf of the Defendants, testified as follows:

Direct examination by Mr. DUNNE:

Q. Mr. Stebbins, when you were on the stand before, I had a statement before me as to the Asiatic business eastbound through San Francisco going by Sunset Route, but I do not notice in the record that I called your attention to it. I will ask you if you have that statement before you?

A. I have the statement here.

8146 The statement produced by the witness was marked Defendants' Exhibit 249 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 249 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 249.

(Stebbins.)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business received from China and Japan, for fiscal year ending June 30th, 1909.

Tons	Ship revenue.	Rail revenue.	Total system revenue.
7	$36.46	$171.86	$208.32

AUDITOR'S OFFICE,
New York, N. Y.,
Jan. 12th, 1910.

(Sgd) B. G. BARTHOLOMEW, *Auditor.*

Q. This statement was prepared from the books of the company, was it not?

A. It was.

Q. Since adjournment have you prepared a statement of the freight traffic to points in the Willamette Valley, Oregon (excluding Portland), via Union Pacific system, Granger, Wyoming, and Portland, Oregon, from eastern territories, for the fiscal year ending June 30, 1900?

A. I have.

Q. Have you that statement before you?

A. I have the statement.

Q. Did you compile that from the records of the company?

A. I did.

8147 Q. Attached to that statement have you specified the points served and not served by the river boats, as you did in your former statement?

A. I have a detailed statement.

Q. I will ask you to attach that detail to the statement.

The papers produced by the witness were marked Defendants' Exhibit 250 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 250 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 250.

(Stebbins.)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Granger, Wyo., and Portland, Ore., from eastern territories specified below, for fiscal year ending June 30, 1900.

From—	Tons carried.	U. P. system freight revenue.
Missouri River and common points terr'y	90.22	2,944.29
Mississippi River and common points "	50.01	1,758.45
Chicago and common points "	332.49	10,775.06
Cincinnati, Detroit, and common points "	80.85	2,121.53
Pittsburg, Buffalo, and common points "	27.15	967.03
New York, Boston, and common points "	216.90	6,528.20
Total	797.62	25,122.56
To points served by Willamette River boats	513.78	16,229.20
To points on S. P. Co. not served by Willamette River boats	283.84	8,893.36
Total	797.62	25,122.56

Compiled by:

(Sgd.) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

8148 *Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific system, Granger, Wyo., and Portland, Ore., from eastern territories specified below for fiscal year ending June 30, 1900.*

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. system freight revenue.	Tons carried.	U. P. system freight revenue.
From Missouri River and common points territory to—				
Albany	3.57	141.08	.....	.....
Corvallis	1.65	68.07	.....	.....
Dallas	1.88	62.56	.....	.....
Dayton	.32	17.59	.....	.....
Independence	3.00	112.95	.....	.....
Newburg	.58	55.19	.....	.....
Oregon City	.98	50.82	.....	.....
Salem	14.02	526.48	.....	.....
Wilsonville	.54	17.33	.....	.....
Aumsville	.....	.....	.18	5.82
Aurora	.....	.....	.23	5.92
Canby	.....	.....	2.43	70.66
Coburg	.....	.....	.09	3.46
Cottage Grove	.....	.....	.09	3.22
Dundee	.....	.....	.08	7.45
Eugene	.....	.....	18.39	483.73
Forest Grove	.....	.....	6.33	202.99
Gervais	.....	.....	.13	4.92
Halsey	.....	.....	1.32	47.97
Harrisburg	.....	.....	1.20	85.65
Hillsboro	.....	.....	.83	26.85
Jefferson	.....	.....	1.79	57.86
Junction City	.....	.....	.47	16.18
Lebanon	.....	.....	1.74	86.88
McMinnville	.....	.....	5.68	179.79
Mayfield	.....	.....	.34	14.23
Monitor	.....	.....	.60	20.20
Monmouth	.....	.....	2.23	74.33
Natron	.....	.....	.07	2.34
North Yamhill	.....	.....	10.00	174.40
Scio	.....	.....	1.65	58.34
Shedds	.....	.....	1.16	36.95
Silverton	.....	.....	.92	33.20
Stayton	.....	.....	1.73	62.70
West Scio	.....	.....	.08	2.30
West Stayton	.....	.....	2.51	85.20
Woodburn	.....	.....	1.41	38.68
Total	26.54	1,052.07	63.68	1,892.22
8149 From Mississippi River and common points territory to—				
Albany	1.34	59.03	.....	.....
Buena Vista	.05	2.31	.....	.....
Champoeg	.12	7.21	.....	.....
Corvallis	.38	21.57	.....	.....
Dallas	1.28	30.89	.....	.....
Independence	2.40	100.43	.....	.....
Newburg	1.58	68.54	.....	.....
Oregon City	6.35	238.45	.....	.....
Salem	9.93	377.63	.....	.....
Wilsonville	.79	28.80	.....	.....

Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. system freight revenue.	Tons carried.	U. P. system freight revenue
From Mississippi River and common points territory to—Continued.				
Amity			.38	13.55
Aumsville			.26	5.68
Aurora			.11	3.89
Brownsville			1.47	60.53
Canby			.42	14.99
Coburg			.05	2.31
Cottage Grove			.42	15.12
Eugene			10.97	225.98
Forest Grove			1.43	64.75
Harrisburg			.09	3.26
Hillsboro			.07	4.91
Irving			.01	2.10
Jefferson			.02	2.60
Junction City			.20	7.29
Lebanon			.53	19.44
McMinnville			1.39	54.17
Monroe			1.08	35.44
North Yamhill			.10	1.97
Parker			.06	2.37
Sheridan			1.06	46.97
Silverton			2.44	105.01
Springfield			.02	2.60
Stayton			2.84	114.24
Turner			.06	1.95
West Stayton			.18	8.10
Woodburn			.13	4.37
Total	24.22	934.86	25.79	823.59
8150 From Chicago and common points territory to—				
Albany	82.84	2,306.73		
Corvallis	40.10	1,047.87		
Dallas	5.19	180.57		
Dayton	.96	41.23		
Independence	3.85	184.92		
Newburg	3.62	159.40		
New Era	.09	4.81		
Oregon City	23.36	985.41		
Oswego	.58	23.76		
Salem	81.61	2,409.84		
Wheatland	.22	14.38		
Willamette	.08	2.86		
Wilsonville	.24	9.49		
Airlie			.40	20.55
Amity			1.30	50.09
Aumsville			.49	17.93
Aurora			1.60	71.26
Ballston			.26	8.75
Beaverton			.14	9.54
Brooks			.81	31.73
Brownsville			.76	33.36
Canby			1.42	64.82
Carlton			.21	10.65

Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. system freight revenue.	Tons carried.	U. P. system freight revenue.
From Chicago and common points territory to—Continued.				
Chemawa			.04	4.60
Cornelius			.42	20.08
Cottage Grove			2.42	73.49
Dilley			.02	2.22
Dundee			.16	4.79
Eugene			11.66	426.93
Forest Grove			8.45	345.81
Gaston			.36	16.10
Gervais			.61	32.26
Goshen			.13	6.36
Halsey			.72	28.64
Harrisburg			1.48	64.47
Hillsboro			2.60	119.07
Hubbard			.05	4.95
Jefferson			.52	28.56
Junction City			.48	19.47
Lafayette			.21	11.34
Lebanon			7.49	264.08
McCoy			.46	23.11
McMinnville			25.87	861.95
8151 Marion			.14	6.45
Mayfield			.47	15.68
Monitor			.29	11.20
Monmouth			.95	40.61
Monroe			.08	2.39
Mt. Angel			1.09	41.43
North Yamhill			.19	8.35
Parker			.26	10.30
Perrydale			.09	4.44
Plainview			.13	4.48
Pleasant Hill			.01	1.60
Reedsville			.19	8.59
Scio			.13	5.92
Shedds			.08	4.97
Sheridan			1.93	68.40
Sherwood			.43	25.48
Silverton			4.53	170.28
Springfield			.62	28.21
Stayton			1.10	50.89
Tangent			.05	2.22
Turner			.23	12.53
Waterloo			.21	11.97
West Scio			1.29	50.35
West Stayton			.74	36.85
Woodburn			2.82	92.98
Yamhill			.16	8.26
Total	242.74	7,371.27	89.75	3,401.79
From Cincinnati, Detroit, and common points territory to—				
Albany	5.87	210.61		
Buena Vista	.08	4.01		
Corvallis	1.65	53.89		
Dallas	12.93	261.53		

Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	C. P. system freight revenue.	Tons carried.	C. P. system freight revenue.
From Cincinnati, Detroit, and common points territory to—Continued.				
Dayton	.07	2.29		
Independence	1.08	25.62		
Newberg	5.29	214.15		
New Era	.21	12.16		
Oregon City	3.54	178.27		
Salem	8.21	339.23		
Wheatland	.36	11.06		
Wilsonville	.01	1.95		
8152 Aumsville			.18	8.62
Aurora			.35	10.01
Benton (?)			.08	2.28
Brownsville			.22	11.31
Canby			.16	5.23
Cornelius			.37	11.71
Cottage Grove			.08	3.69
Eugene			1.89	75.88
Forest Grove			.32	12.96
Gervais			.17	7.44
Harrisburg			.01	1.96
Hillsboro			.53	20.53
Hubbard			.20	12.87
Jefferson			.06	2.70
Junction City			.07	2.18
Lebanon			.32	8.59
McMinnville			33.39	488.94
Monmouth			.07	1.88
North Yamhill			.44	8.63
Perrydale			.06	5.07
Scio			.22	4.17
Shedds			.05	1.95
Sheridan			.18	8.35
Sherwood			.03	1.89
Silverton			.34	10.72
Stayton			.06	2.24
Sublimity			.14	2.41
Tangent			.96	45.01
West Stayton			.05	1.60
Woodburn			.93	15.87
Total	28.40	1,241.89	41.53	806.70
From Pittsburg, Buffalo, and common points territory to—				
Albany	1.31	112.01		
Corvallis	2.33	18.61		
Dallas	.4	4.17		
Dayton	.07	2.24		
Dover Landing	.74	2.87		
Independence	.30	9.44		
8153 Newberg	.05	1.83		
Oregon City	2.04	185.80		
Salem	7.15	289.37		
Wilsonville	.02	4.61		
Amity			.15	2.84
Aumsville			.15	2.84

Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. system freight revenue.	Tons carried.	U. P. system freight revenue.
From Pittsburg, Buffalo, and common points territory to—Continued.				
Brownsville			1.75	73.85
Canby			.13	2.61
Creswell			.23	4.40
Clackamas			.05	1.66
Dundee			.02	1.89
Eugene			1.82	56.83
Forest Grove			1.55	44.87
Gaston			.02	1.89
Gervais			.02	1.96
Hillsboro			.11	4.79
Hubbard			.10	2.83
Jefferson			.05	1.89
Lebanon			.82	23.26
McMinnville			.99	32.02
North Yamhill			.03	1.77
Scio			.19	3.57
Silverton			1.16	27.64
Stayton			.14	5.98
West Scio			.10	1.89
Woodburn			.22	5.13
Total	17.35	690.62	9.80	306.41
From New York, Boston, and common points territory to—				
Albany	23.76	736.98		
Champoeg	.02	2.02		
Corvallis	9.14	275.90		
Dallas	2.50	83.37		
Dayton	1.69	59.88		
Independence	4.56	123.59		
Newberg	.57	18.52		
Oregon City	49.53	1,312.81		
Oswego	.35	9.22		
Salem	72.45	2,239.98		
Wheatland	.06	3.34		
Airlie			.08	3.27
Amity			.14	4.18
Amsville			.19	6.77
Aurora			.65	23.22
Brownsville			1.32	59.64
Canby			.74	18.42
Chemawa			.43	18.67
Calif			.15	5.85
Creswell			.42	13.39
Cottage Grove			.51	14.76
Dundee			.03	10.48
Eugene			13.79	447.04
Forest Grove			7.07	244.44
Gaston			.15	3.73
Harrisburg			1.19	41.14
Hillsboro			1.39	48.05
Hubbard			.28	7.62
Irene			.18	5.19
Jefferson			.27	8.85

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Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. system freight revenue.	Tons carried.	U. P. system freight revenue.
From New York, Boston, and common points territory to—Continued.				
Junction City			.60	24.48
Lafayette			.60	27.30
Lebanon			1.00	33.03
McCoy			.10	2.88
McMinnville			10.81	325.48
Marion			.02	1.68
Monroe			.77	23.79
Mt. Angel			.26	7.31
North Yamhill			.49	14.99
Perrydale			.71	20.51
Scio			.16	4.33
Sheridan			.71	22.90
Silverton			3.40	79.98
Springfield			.34	9.81
Stayton			.51	15.71
Sublimity			.22	7.28
Turner			.04	1.66
Waterloo			.05	2.74
Wellsburg			.06	1.58
West Scio			.24	8.99
8155 West Stayton			.70	18.84
Whiteson			.04	1.79
Woodburn			1.37	42.16
Total	163.63	4,865.61	53.27	1,662.59
Grand total	513.78	16,229.20	283.84	8,893.36

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor Union Pacific System and Southern Pacific Company.

Q. Have you prepared a like statement of freight traffic from points in the Willamette Valley, Oregon (excluding Portland) via Union Pacific System, Portland, Oregon, and Granger, Wyoming, to eastern territories, as specified in the statement, for the fiscal year ending June 30, 1900, with the detail?

A. I have the statement.

Q. That was compiled from the records of the company?

A. It was.

The papers produced by the witness were marked Defendants' Exhibit 251, and offered in evidence by Mr. Dunne.

Defendants' Exhibit 251 (Stebbins) is as follows:

8156 DEFENDANTS' EXHIBIT 251.

(Stebbins.)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland) via Union Pacific System, Portland, Oregon, and Granger, Wyoming, to eastern territories, as specified below, for fiscal year ending June 30, 1900.

To—	Tons carried.	U. P. System freight revenue.
Missouri River and common points territory	21.96	$645.14
Mississippi River and common points territory	10.73	292.75
Chicago and common points territory	168.57	3,338.51
Cincinnati, Detroit, and common points territory	7.21	181.63
Buffalo, Pittsburg, and common points territory	9.02	200.94
Boston, New York, and common points territory	237.03	3,264.91
Total	454.52	7,923.88
From points served by Willamette River boats	327.91	5,787.05
From points on Southern Pacific lines not served by Willamette River boats	126.61	2,136.83
Total	454.52	7,923.88

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Co.

8157 *Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Portland, Oregon, and Granger, Wyoming, to eastern territories, as specified below, for fiscal year ending June 30, 1900.*

	From points served by Willamette River boats.		From points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. System freight revenue.	Tons carried.	U. P. System freight revenue.
To Missouri River and common points territory from—				
Beardsleys Landing	6.59	197.86		
Champoeg	.42	12.49		
Steamer Elmore	.15	6.50		
Fairfield	1.00	24.62		
Oregon City	5.57	171.44		
Rogers Landing	.10	4.65		
Salem	.88	47.34		
Marion			7.25	180.24
Total	14.71	464.90	7.25	180.24
To Mississippi River and common points territory from—				
Albany	1.57	47.84		
Dallas	.09	5.61		
Independence	6.73	148.67		
Oregon City	2.10	79.63		
Salem	.24	11.03		
Total	10.73	292.75		

Statement of total freight traffic from points in Willamette Valley, Oregon, etc.—Cont'd

	From points served by Willamette River boats.		From points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	U. P. System freight revenue.	Tons carried.	U. P. System freight revenue.
To Chicago and common points territory from—				
Albany	14.15	392.20		
Buttesville	5.26	131.52		
Beardsleys Landing	1.03	26.93		
Dallas	28.38	494.06		
Fairfield	11.69	270.01		
Gearing Landing	.49	10.09		
Independence	14.77	250.80		
Oregon City	6.86	242.82		
Salem	14.23	266.77		
Wheatland	4.75	114.35		
Barlow			66.96	1,138.96
Total	101.61	2,199.55	66.96	1,138.96
$158 To Cincinnati, Detroit, and common points territory from—				
Buttesville	4.21	88.52		
Champoeg	.59	12.17		
Oregon City	2.22	71.23		
Salem	.19	9.71		
Total	7.21	181.63		
To Pittsburg, Buffalo, and common points territory from—				
Albany	.40	7.74		
Buttesville	5.10	93.67		
Independence	2.14	46.39		
Oregon City	.20	13.11		
Salem	1.18	40.03		
Total	9.02	200.94		
To New York, Boston, and common points territory from—				
Albany	3.55	112.24		
Buttesville	3.07	50.21		
Champoeg	54.70	213.54		
Dallas	21.54	393.73		
Fairfield	51.59	678.57		
Independence	4.66	91.44		
McCley	6.72	126.66		
Monroe	.86	18.26		
Oregon City	15.11	333.43		
Salem	16.61	331.62		
Wheatland	6.22	97.58		
Eugene			6.97	113.64
Hubbard			12.24	160.98
Lafayette			8.25	149.28
McMinnville			14.32	233.02
Silverton			10.62	160.72
Total	184.63	2,447.28	52.40	817.64
Grand total	327.91	5,787.05	126.61	2,136.82

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor Union Pacific System and Southern Pacific Company.

8159 Q. Have you also prepared a statement of the freight traffic from points in the Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company-Pacific System, and Rio Grande Western Railway, to the Missouri River, and east, for the fiscal year ending June 30, 1900?

A. I have such a statement, and a detailed statement attached.

Q. Will you explain how that statement was compiled?

A. The information set forth in this statement was obtained from the general auditor of the Denver & Rio Grande Railroad Company. It was compiled by the freight auditor of that road.

Q. Is he here?

A. The freight auditor is here.

Q. You have the detail going with that statement, have you not?

A. I have.

The papers produced by the witness were marked Defendants' Exhibit 252 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 252 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 252.

(Stebbins.)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company-Pacific System, and Rio Grande Western Ry. to Missouri River and east, for fiscal year ending June 30, 1900.

	Tons carried.	S. P. Co. freight revenue.
From points served by Willamette River boats	635.2	$6,186.10
From points on Southern Pacific lines not served by Willamette River boats	656.4	7,383.87
Total	1,291.6	13,569.97

8160 NOTES.—1. Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

2. "From points served by Willamette River boats" includes 72.5 tons, $910.40, from Wheatland. It is not known whether this is Wheatland, Ore., or Wheatland, Calif.; if the latter, it should not be included in this statement.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company-Pacific System and Rio Grande Western Railway to Missouri River and east, for fiscal year ending June 30, 1900.

	From points served by Willamette River boats.		From points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	S. P. Co. freight revenue.	Tons carried.	S. P. Co. freight revenue.
Albany	68.4	625.44	.....	.....
Corvallis	115.5	728.51	.....	.....
Independence	86.7	812.96	.....	.....
Newburg	.2	4.09	.....	.....
Oregon City	.1	3.85	.....	.....
Salem	291.8	3,100.85	.....	.....
*Wheatland	72.5	910.40	.....	.....
Aumsville			2.0	23.91
Aurora			29.0	362.12
Ballston			.2	2.31
Barlow			.1	1.43
Brownsville			29.1	265.05
Brooks			15.2	188.70
Canby			.2	4.91
Cottage Grove			20.6	124.29
Creswell			6.3	98.51
Dallas			49.6	413.16
Derry			23.7	280.29
Dilley			.1	.86
Downs			8.7	98.94
Eugene			196.3	2,378.97
Forest Grove			1.6	26.71
Gervais			29.2	376.11
Goshen			.1	1.75
8161 Harrisburg			12.2	146.24
Hillsboro			.4	15.50
Hubbard			14.1	174.68
Jefferson			7.4	101.71
Junction City			.2	8.32
Lafayette			.2	3.66
Lebanon			7.3	97.67
Macleay			16.8	207.00
McKee			2.2	19.82
McMinnville			5.9	101.25
Mt. Angel			8.5	112.32
North Yamhill			.6	22.04
Perrydale			4.4	11.85
Pratum			6.9	63.61
Saginaw			.3	11.77
Shaw			8.3	77.11
Sheridan			6.2	65.39
Sherwood			10.3	129.48
Silverton			23.9	301.96
Spicer			7.8	93.41
Simpson			6.9	51.70
Switzerland			23.6	241.71
Turner			.1	3.25
West Scio			43.0	353.73
Whiteson			8.0	91.37
Woodburn			18.9	249.32
	635.2	6,186.10	656.4	7,385.87

NOTES.—1. Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

It is not known whether this is Wheatland, Ore., or Wheatland, Calif. If the latter, it should not be included in this statement.

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

8162 Q. Referring to Defendants' Exhibit 252, the Rio Grande statement, in connection with the Willamette Valley eastbound business, how was that statement compiled? I think you stated by the auditor of the Rio Grande. Am I right about that?

A. Yes, sir; by the freight auditor of the Denver & Rio Grande Railroad Company. The information was furnished by the Denver & Rio Grande Railroad Company. The statement as made up here, in the particular form in which it is shown, was compiled by myself.

Q. Have you made a statement of the freight traffic to points in the Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Railway and Southern Pacific Company—Pacific System—from the Missouri River and east, for the fiscal year ending June 30, 1900?

A. I have made such a statement.

Q. That was prepared in the same way as the eastbound statement last introduced?

A. It was.

Q. The detail is attached to it?

A. Yes.

The papers produced by the witness were marked "Defendants' Exhibit 253 (Stebbins)," and offered in evidence by Mr. Dunne.

Defendants' Exhibit 253 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 253.
(Stebbins.)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Ry. and Southern Pacific Company—Pacific System—from Missouri River and east, for fiscal year ending June 30, 1900.

	Tons carried.	S. P. Co. freight revenue.
To points served by Willamette River boats	206.1	$3,175.69
To points on Southern Pacific lines not served by Willamette River boats	192.0	2,839.46
Total	398.1	6,015.15

8163 NOTE.—Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successors to the Rio Grande Western Ry. Co.

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

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Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Ry. and Southern Pacific Company—Pacific System—from Missouri River and east, for fiscal year ending June 30, 1900.

	To points served by Willamette River boats.		To points on S. P. Co. not served by Willamette River boats.	
	Tons carried.	S. P. Co. freight revenue.	Tons carried.	S. P. Co. freight revenue.
Albany	120.7	$1,483.82		
Corvallis	12.0	249.99		
Dayton	.1	3.02		
Independence	12.8	212.82		
New Era	.1	3.40		
Newburg	1.3	34.42		
Oregon City	5.5	176.41		
Oswego	.1	1.32		
Salem	49.5	1,010.49		
Airlee			.2	$4.30
Amity			1.3	35.11
Aumsville			1.0	19.94
Aurora			.5	10.10
Ballston			.4	12.60
Brownsville			1.9	37.77
Canby			.9	19.53
Carlton			.3	5.69
Coburg			21.7	169.69
Cottage Grove			3.6	84.75
Creswell			.6	13.37
Dallas			6.1	131.88
Derry			.4	4.89
Dilley			.6	14.28
Dundee Junction				1.37
Eugene			74.3	726.81
Forest Grove			6.5	159.05
8164 Gaston			.3	6.48
Gervais			.6	13.64
Goshen			.5	13.08
Halsey			2.3	69.65
Harrisburg			.6	10.93
Hillsboro			1.5	38.36
Hubbard			.5	13.94
Irving			.1	1.90
Jefferson			.2	6.49
Jefferson City			.4	9.28
Junction City			1.1	25.45
Lebanon			6.1	144.92
Macleay				1.32
Marion			.2	5.83
McKee			.1	1.84
McCoy				1.42
McMinnville			11.8	235.06
Monmouth			.7	15.28
Mt. Angel			4.0	100.80
North Yamhill			.6	17.06
Scio			.1	2.94
Shaw			.1	.99
Shedd			.5	13.50
Sheridan			1.1	31.17
Sherwood			.3	14.71
Silverton			2.9	75.85
Springfield			23.3	265.23

Statement of total freight traffic to points in Willamette Valley, Oregon, etc.—Continued.

	From points served by Willamette River boats.		From points on S. P. Co. not served by Willamette River Boats.	
	Tons carried.	S. P. Co. freight revenue.	Tons carried.	S. P. Co. freight revenue.
St. Mary's			.2	2.24
Surver				1.20
Tangent				1.47
Turner				4.28
West Scio			.2	3.16
West Stayton			1.1	27.45
Whitson			1.1	34.75
Woodburn			9.2	182.66
Total	206.1	3,175.69	192.0	2,839.46

NOTE.—Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

8165 Q. I will ask you if you have prepared a statement of freight traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, having origin or destination on the line of the Southern Pacific Company north of Ashland, Oregon, and south of Portland, Oregon, for the calendar year 1900?

A. I have such a statement.

Q. How was that statement prepared?

A. That statement was taken from a record in the office, of a statement furnished by the freight auditor to the general freight agent or assistant general freight agent some time during the year 1901, and the copy that we have of the statement gives only this information, without further detail, except that the information was given for each month of the year; but we are not able to separate the traffic for the different points in Oregon or for the different territories east of Ogden.

Q. You have not broken up those eastern territories of destination, as you have in these other statements? You did not have the data.

A. We didn't have the information.

Q. I notice also that this statement is for the calendar year 1900. I apprehend that that is due also to the fact that the datum that you found was for the calendar year; am I correct about that?

A. That is correct.

Q. When did you find that statement of datum?

A. It was found within the last three weeks.

Q. I notice also in this statement that it covers the territory between Ashland and Portland, exclusive of Portland, north of Ashland and south of Portland, but that you have not given the specification of points that I find in the detail of your other state-
8166 ments. Was that due also to the paucity of information?

A. It was.

The paper produced by the witness was marked Defendants' Exhibit 254 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 254 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 254.

(Stebbins.)

Statement of freight traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, having origin or destination on the line of Southern Pacific Company north of Ashland, Oregon, and south of Portland, Oregon, for the calendar year 1900.

	Tons carried.	Union Pacific Railroad Company's freight revenue.
Westbound	2,485	28,098.79
Eastbound	4.813	27,221.50
Total	7,298	55,320.29

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

Q. Have you also made a statement of the tonnage and revenue of freight traffic between San Francisco and points in Oregon, Washington, Idaho and Montana, as specified in the statement, via Southern Pacific Company and the Oregon Railroad & Navigation Company for the year ending June 30, 1900?

A. I have such statement.

8167 Q. How was that statement compiled?

A. This statement was compiled from the records of the Oregon Railroad & Navigation Company.

The paper produced by the witness was marked Defendants' Exhibit 255 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 255 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 255.

(Stebbins.)

Tonnage and revenue of freight traffic between San Francisco and points in Oregon, Washington, Idaho, and Montana, as specified below, via Southern Pacific Company and the Oregon Railroad and Navigation Company, for the year ending June 30, 1900.

Between San Francisco and—	Westbound.			Eastbound.			Total.		
	Tons carried.	O. R. & N. Co.'s freight revenue.	S. P. Co.'s freight revenue.	Tons carried.	O. R. & N. Co.'s freight revenue.	S. P. Co.'s freight revenue.	Tons carried.	O. R. & N. Co.'s freight revenue.	S. P. Co.'s freight revenue.
1. Spokane proper	12	153.01	70.55	339	4,619.26	2,050.63	351	4,772.27	2,121.18
2. Pendleton, Athena, Walla Walla, Wallula, Waitsburg, Huntsville, Longs, Dayton, Lewiston, Pullman, Moscow, Connell, Garfield, and Farmington	47	332.83	245.21	113	1,912.75	893.12	160	2,245.58	1,138.33
3. Harrison, Burke, Mullan, and points between				167	6,965.37	2,688.90	167	6,965.37	2,688.90
4. Great Northern Idaho points via Spokane					5.09	1.99		5.09	1.99
5. Great Northern Montana points via Spokane	4	47.60	22.34	146	1,830.90	1,016.94	150	1,878.50	1,039.28
6. Northern Pacific Idaho points via Wallula					1.45	2.61		1.45	2.61
7. Northern Pacific Montana points via Wallula									
Total	63	533.44	338.10	765	15,334.82	6,654.19	828	15,868.26	6,992.29

	Total tons carried.	Gross operating revenue.	
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900 (see Note 1)	7,380,796	39,147,697.33	
Ratio of freight traffic between San Francisco and points specified above to total tons of freight carried by and gross operating revenue of Union Pacific System	0.01 %	0.04 %	
Total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines for year ending June 30, 1900 (see Note 2)	11,631,575		63,920,414.22
Ratio of freight traffic between San Francisco and points specified above to total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines	0.01 %		0.01 %

NOTES 1.—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad and Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

2.—Southern Pacific Company Lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross revenue is correct.

Compiled by:

(Sgd.) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

8169 Q. Have you also made a statement of the tonnage and revenue of freight traffic between San Francisco and Montana common points via Southern Pacific Company and Oregon Short Line Railroad Company for the year ending June 30, 1900?

A. I have made such statement.

Q. How was that compiled?

A. That was compiled from the records of the Oregon Short Line Railroad Company. Owing to the destruction of the headquarters of the Oregon Short Line Railroad Company in 1901, it was necessary to compile this statement from the passing reports of Ogden station, and the information may be slightly incorrect in that it does not reflect the final revision of the way-bills at destination. The statement gives the amount of the way-bills as they were when they passed Ogden station, in either direction.

Q. Then, the passing statements base on the way-bills?

A. Base on the way-bills.

Q. The way-bills then are revised in the general office, are they not?

A. The way-bills are revised at destination and again in the general office.

Q. This statement was made by Mr. McNitt, was it not, of the Oregon Short Line?

A. The information was furnished by him.

The paper produced by the witness was marked "Defendants' Exhibit 256 (Stebbins)," and offered in evidence by Mr. Dunne.

Defendants' Exhibit 256 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 256.

(Stebbins.)

Tonnage and revenue of freight traffic between San Francisco and Montana common points via Southern Pacific Company and Oregon Short Line Railroad Company for year ending June 30, 1900.

Between San Francisco and—	Westbound.			Eastbound.			Total.		
	Tons carried.	O. S. L. R. R. Co.'s freight revenue.	S. P. Co.'s freight revenue.	Tons carried.	O. S. L. R. R. Co.'s freight revenue.	S. P. Co.'s freight revenue.	Tons carried.	O. S. L. R. R. Co.'s freight revenue.	S. P. Co.'s freight revenue.
Butte	227	$2,005.31	$2,521.36	1,822	$20,829.81	$26,221.08	2,049	$22,835.12	$28,742.44
Silver Bow				28	231.45	291.02	28	231.45	291.02
Anaconda	53	251.93	397.53	222	2,400.32	3,787.46	275	2,652.25	4,184.99
Helena	19	134.59	217.65	513	5,216.61	8,315.57	532	5,351.20	8,533.22
Other points				94	757.04	1,196.11	94	757.04	1,196.11
Total	299	2,391.83	3,136.54	2,679	29,435.23	39,811.24	2,978	31,827.06	42,947.78

	Total tons carried.	Gross operating revenue.	
Total tons of freight carried by, and gross operating revenue of, Union Pacific System for year ending June 30, 1900 (see Note 1)	7,380,796	$39,147,697.33	
Ratio of freight traffic between San Francisco and Montana common points specified to total tons of freight carried by, and gross operating revenue of, Union Pacific System	0.04%	0.08%	
Total tons of freight carried by, and gross operating revenue of, Southern Pacific Company lines for year ending June 30, 1900 (see Note 2)	11,631,575		63,220,414.22
Ratio of freight traffic between San Francisco and Montana common points specified to total tons of freight carried by, and gross operating revenue of Southern Pacific Company lines	0.03%		0.07%

NOTES, 1.—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad and Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

2.—Southern Pacific Company lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central lines (so-called) and the Southern Pacific Company's Atlantic Steamship lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

3.—Owing to destruction by fire of the records of the Southern Pacific Company and of other records of the Oregon Short Line Railroad Company, this statement was compiled from the passing reports of Ogden, Utah, station. The figures are, therefore, approximated, as they may not correspond to the waybills as finally revised before settlement.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

8171 Q. You prepared a statement here for a month in 1906 and a month in 1907, at the request of Mr. Severance; and you were called upon for some information in respect to 1900 or 1901. I will ask you if, since adjournment, you have found any data upon which to prepare a statement of the freight traffic interchanged by the Union Pacific Railroad Company and the Southern Pacific Company at Ogden for the years ending June 30, 1900 and 1901?

A. I have found the data and prepared the statement.

Q. What data did you find?

A. A record of the tonnage interchanged and the Union Pacific revenue thereon, at various junction points, in 1900 and 1901. The statement gives the tonnage interchanged at Ogden with the Southern Pacific Company for the two years, and the Union Pacific Railroad Company's revenue thereon. This statement covers all traffic interchanged by the two companies at Ogden.

Q. Whose statement was that, from which you were able to get this information?

A. That was in the records of the accounting department at Omaha. This statement covers all traffic interchanged at Ogden, regardless of point of origin or destination. It includes traffic from and to local points on the Union Pacific Railroad and local points on the Southern Pacific Company's lines.

Q. You don't mean that it includes traffic originating at a local point on the Union Pacific and terminating at a local point on the Union Pacific?

A. No.

Q. You mean traffic that went through Ogden?

A. Traffic that was interchanged at Ogden between the two companies.

Q. But we understood the records had been destroyed. I want the record to show what efforts have been made and what you
8172 have accomplished in the way of getting this information. What statement was that?

A. That was a statement which showed the tonnage——

Q. Pardon me for interrupting you. I think you have made plain what it showed, but who prepared the statement?

A. The statement was prepared by the freight auditor of the Union Pacific Railroad Company.

Q. How did he come to prepare such a statement?

A. It was a form of statement which was regularly prepared at that time.

Q. Mr. Seger has called my attention to the fact that the records were destroyed. How was it that this copy was obtainable by you?

A. This happened to be a copy that was retained in the general office or in the freight auditor's office, and was not in the record room where the fires occurred.

Q. When did you get access to this copy?

A. Since the last hearing—within the last three weeks.

The paper produced by the witness was marked "Defendants' Exhibit 257 (Stebbins)," and offered in evidence by Mr. Dunne.

Defendants' Exhibit 257 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 257.

(Stebbins.)

Statement of freight traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, for the years ending June 30, 1900 and 1901.

Year.	Tons carried.	Union Pacific R. R. Company's revenue.
1900	588,510	3,933,555.62
1901	583,701	4,175,183.52

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

8173 Q. Were you able to make a statement of the passenger traffic interchanged likewise at Ogden for 1900 or 1901?

A. I have made such statement.

Q. How was that statement compiled?

A. That statement was compiled from the records of the Company. But owing to the partial destruction of records it was necessary to estimate a portion of the traffic for four months.

Q. What year does the statement cover?

A. This is the year ending June 30, 1901.

Q. How much of that is actual and how much is estimated?

A. As far as the reports of the Union Pacific Railroad Company's own agents are concerned, the statement is actual for eleven months and estimated for one month. For the reports of tickets sold by foreign roads over the Union Pacific railroad the statement is actual for nine months, and a portion of the traffic is estimated for the other three months. The estimate in each case is the most intelligent approximation we could make, based on the business furnished by the same roads during other months of the year and the business furnished by other roads during the same three months.

Q. Why was it that as to three months in one instance and one month in another instance, you were compelled to resort to approximation?

A. That was on account of the destruction of the records by fire.

The statement produced by the witness was marked Defendants' Exhibit 258 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 258 (Stebbins) is as follows:

8174 DEFENDANTS' EXHIBIT 258.

(Stebbins.)

Statement of passenger traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, for the year ending June 30, 1901.

Passengers carried	53,132
Union Pacific Railroad Company's revenue	$1,007,785.18

NOTE.—Owing to the destruction of records by fire, the passenger traffic is partially approximated for four months.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

WITNESS: I would like to say, in respect to that statement, that it covers all traffic interchanged by the Union Pacific and Southern Pacific at Ogden—traffic from or to local points on the Union Pacific, as well as through traffic from or to the Missouri River and east.

Q. Have you compiled a statement for the Union Pacific system of the revenue from operations for the fiscal years ending June 30, 1900, to and including June 30, 1909?

A. I have.

Q. That is a classified statement, is it not?

A. The statement shows for each year the freight revenue, the passenger revenue, and revenues of other classes combined, mail, express and other revenues from operations in one item; also the total revenue from operations.

8175 Q. What was that statement compiled from?

A. That was compiled from the records of the companies. I would like to state in respect to the freight revenue shown in this statement for the year 1901——

Q. Are you speaking of the Union Pacific?

A. Union Pacific system, yes—that there is a difference of about $75,000 between this amount and the amount of the freight revenue for the year ending June 30, 1901, which was given in my former testimony, appearing on page 4585 of the printed record. That $75,000 represents the freight revenue of some auxiliary lines of the Union Pacific system, especially of the Oregon Short Line Railway Company, which at that time were not leased by the Oregon Short Line Railway Company. They were not really a part of the system. The figures shown in the present statement correspond to the figures shown in the annual reports of the Company and also to the figures reported to the Interstate Commerce Commission.

The paper produced by the witness was marked Defendants' Exhibit 259 (Stebbins), and offered in evidence by Mr. Dunne.

Defendants' Exhibit 259 (Stebbins) is as follows:

8176

DEFENDANTS' EXHIBIT 259.

(Stebbins.)

Statement of Revenue from Operations for each fiscal year ending June 30, 1900, to 1909, inclusive.

1900.

	U. P. R. R. Co.	O. S. L. R. R. Co.	O. R. & N. Co.	U. P. System.
Freight revenue	16,504,304.87	6,372,318.73	5,444,392.46	28,321,016.06
Passenger revenue	4,034,945.66	1,714,992.89	1,688,345.43	7,438,283.98
Mail, express and other revenues from operations	2,507,656.80	491,085.73	389,654.76	3,388,397.29
Total revenues from operations	23,046,907.33	8,578,397.35	7,522,392.65	39,147,697.33

1901.

Freight revenue	18,462,554.34	7,251,208.34	6,312,029.94	32,025,792.62
Passenger revenue	4,410,333.65	1,924,238.18	1,719,126.00	8,053,697.83
Mail, express and other revenues from operations	2,599,712.21	497,833.01	361,145.34	3,458,690.56
Total revenues from operations	25,472,600.20	9,673,279.53	8,392,301.28	43,538,181.01

1902.

Freight revenue	19,452,978.42	8,476,337.42	6,700,717.47	34,630,033.31
Passenger revenue	4,957,245.69	2,281,610.47	1,933,860.73	9,172,716.89
Mail, express and other revenues from operations	2,725,903.89	554,345.29	417,280.12	3,697,529.30
Total revenues from operations	27,136,128.00	11,312,293.18	9,051,858.32	47,500,279.50

1903.

Freight revenue	20,418,414.92	8,680,763.77	7,142,068.35	36,241,247.04
Passenger revenue	5,141,472.61	2,248,240.17	2,346,937.21	9,736,649.99
Mail, express and other revenues from operations	3,042,827.79	608,546.19	487,682.61	4,139,056.59
Total revenues from operations	28,602,715.32	11,537,550.13	9,976,688.17	50,116,953.62

1904.

Freight revenue	24,267,848.74	8,913,777.05	7,008,091.25	40,189,717.04
Passenger revenue	5,830,582.18	2,447,100.57	2,476,327.28	10,754,010.03
Mail, express and other revenues from operations	3,140,838.33	690,068.82	504,596.45	4,335,503.60
Total revenues from operations	33,239,269.25	12,050,946.44	9,989,014.98	55,279,230.67

8177

1905.

Freight revenue	25,736,780.06	9,992,750.00	7,633,397.61	43,362,928.27
Passenger revenue	6,203,393.01	2,674,932.07	2,606,297.00	11,484,622.08
Mail, express, and other revenues from operations	3,234,951.46	688,886.61	553,560.24	4,477,398.31
Total revenues from operations	35,175,124.53	13,356,569.28	10,793,254.85	59,324,948.66

Statement of Revenue from Operations for each fiscal year ending June 30, 1906, to 1909, inclusive—Continued.

1906.

	U. P. R. R. Co.	O. S. L. R. R. Co.	O. R. & N. Co.	U. P. System.
Freight revenue	29,517,907.11	11,295,911.54	8,454,173.24	49,267,991.89
Passenger revenue	6,921,953.42	3,174,461.37	3,240,088.78	13,336,503.57
Mail, express, and other revenues from operations	3,356,009.97	699,703.25	621,333.92	4,677,047.14
Total revenues from operations	39,795,870.50	15,170,076.16	12,315,595.94	67,281,542.60

1907.

Freight revenue	33,059,596.25	12,853,101.26	9,148,082.80	55,060,780.31
Passenger revenue	8,254,809.24	3,420,953.32	3,323,988.28	14,999,750.84
Mail, express, and other revenues from operations	4,198,528.05	922,064.13	859,603.32	5,980,195.50
Total revenues from operations	45,512,933.54	17,196,118.71	13,331,674.40	76,040,726.65

1908.

Freight revenue	31,644,925.44	11,403,599.85	10,040,383.94	53,088,909.23
Passenger revenue	9,089,888.87	3,908,117.74	3,720,866.99	16,718,873.60
Mail, express, and other revenues from operations	4,203,376.82	1,106,620.98	921,444.28	6,231,442.08
Total revenues from operations	44,938,191.13	16,428,338.57	14,682,695.21	76,039,224.91

1909.

Freight revenue	32,960,699.52	12,591,282.05	8,622,145.67	54,174,127.24
Passenger revenue	9,889,650.98	4,202,118.25	3,511,926.47	17,603,695.70
Mail, express, and other revenues from operations	4,859,911.89	1,194,868.45	917,858.27	6,972,638.61
Total revenues from operations	47,710,262.39	17,988,268.75	13,051,930.41	78,750,461.55

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

8178 Q. Have you made a similar statement for the Southern Pacific Company?

A. I have done so.

Q. Compiled in the same way?

A. Compiled in the same way.

Q. This is also classified—shows freight revenue?

A. It is also classified to show separately freight revenue, passenger revenue, revenue from mail, express, and other operations, and the total revenues from operations.

The paper produced by the witness was marked Defendants' Exhibit 260, and offered in evidence by Mr. Dunne.

Defendants' Exhibit 260 (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 260.
(Stebbins.)

Southern Pacific Company lines.

Statement of revenues from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.

1900.	
Freight revenue	$42,851,952.62
Passenger revenue	15,897,557.44
Mail, express and other revenues from operations	5,170,904.16
Total revenues from operations	63,920,414.22
1901.	
Freight revenue	[a] $54,251,584.64
Passenger revenue	18,903,036.08
Mail, express and other revenues from operations	4,090,277.46
Total revenues from operations	77,244,898.18
1902.	
Freight revenue	$57,082,415.26
Passenger revenue	21,872,917.10
Mail, express and other revenues from operations	4,588,489.14
Total revenues from operations	83,543,821.50
1903.	
Freight revenue	$59,313,412.19
Passenger revenue	23,748,273.62
Mail, express and other revenues from operations	5,258,649.42
Total revenues from operations	88,320,335.23
1904.	
Freight revenue	$62,008,031.46
Passenger revenue	25,436,076.07
Mail, express and other revenues from operations	5,489,123.20
Total revenues from operations	92,933,230.73
1905.	
Freight revenue	$63,115,442.30
Passenger revenue	26,697,373.32
Mail, express and other revenues from operations	5,702,342.39
Total revenues from operations	95,515,158.01
1906.	
Freight revenue	$69,663,056.51
Passenger revenue	29,441,727.35
Mail, express and other revenues from operations	6,527,765.66
Total revenues from operations	105,632,549.52

[a] Includes all revenues of Cromwell Steamship Company.

1907.

Freight revenue	$82,901,982.92
Passenger revenue	33,966,491.11
Mail, express and other revenues from operations	8,074,323.67
Total revenues from operations	124,942,797.70

1908.

Freight revenue	$76,966,648.80
Passenger revenue	36,137,416.25
Mail, express and other revenue from operations	10,172,855.72
Total revenues from operations	123,276,920.77

1909.

Freight revenue	$75,467,931.94
Passenger revenue	34,825,163.13
Mail, express and other revenues from operations	10,228,813.67
Total revenues from operations	120,521,908.74

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

8180 WITNESS. I would like to make a statement, that prior to December 31, 1903, the Southern Pacific Company included in its freight revenue, charges at a very low rate—2 mills per ton per mile—on material carried for the use of the Company itself. Since December, 1903, that has not been done, except in the case of material carried for construction, in which case the freight charges assessed go into the cost of the property.

Mr. SEVERANCE. Does this statement, Defendants' Exhibit 260, include the revenues of the Texas lines?

WITNESS. It includes the revenues of the Texas lines—all of the Southern Pacific Company lines.

Q. I do not suppose that the explanation you have made is specially important, except I presume you want to direct our attention—and I will call your attention to it, Mr. Severance—that in one place in Mr. Stebbins' testimony he gives the freight revenue for 1901 as approximately $52,000,000 and in this statement it is given as approximately $54,000,000.

A. That is correct. There is a slight difference for 1901 and 1900.

An adjournment was thereupon taken until the morning of Wednesday, March 30, 1910, at 10.30 o'clock.

8181 ROOM 720, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, March 30, 1910—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of Complainant, Mr. C. A. Severance; on behalf of Defendants, Mr. Peter F. Dunne.

C. S. STEBBINS

recalled:

Cross-examination by Mr. SEVERANCE:

Q. Mr. Stebbins, will you take these exhibits in the order in which they were marked yesterday. You have copies of them there, haven't you?

A. Yes.

Q. This Defendants' Exhibit 249, showing a very small amount of business eastbound, from the Orient, you got from the figures at New Orleans?

A. Yes; those were taken from the figures in the New Orleans office.

Q. Now, the next one, Defendants' Exhibit 250, showing the freight traffic to points in the Willamette Valley, excluding Portland, via the Union Pacific and Granger, you got from what source?

A. From the records of the O. R. & N. Company at Portland.

Q. How did it happen that you did not find that earlier; do you know?

A. We put in a partial statement of the Willamette Valley traffic, taken from those records, at the last hearing.

Q. Well, how did it happen that this one was not prepared?

A. We were not asked for it.

Q. You are satisfied as to the correctness of these figures?

8182 A. I am.

Q. Now, take Defendants' Exhibit 251. How far south of Portland do you characterize the territory as Willamette Valley?

A. As far as Divide station. I have forgotten how many miles it is, but it is the summit of the watershed between the Willamette Valley and the river south, Rogue River, I think it is.

Q. Well, that will show on the map?

A. Yes, sir.

Q. It is Divide station on the Southern Pacific line?

A. Yes, sir.

Q. And I suppose these figures were taken from the same sources as the ones on Defendants' Exhibit 250.

A. They were. This is the eastbound traffic, and Defendants' Exhibit 250 gives the westbound traffic.

Q. Now, as I understand you, the figures on Defendants' Exhibits 252 and 253 were obtained by you from the Rio Grande?

A. From the Denver & Rio Grande Railroad Company.

Q. Where you state here "From points on Southern Pacific lines not served by Willamette River Boats," you mean, do you not, that you are excluding the river towns that are reached by the Southern Pacific? To make myself clear, where you say on these exhibits "From points on Southern Pacific lines not served by Willamette River Boats," you mean inland points on the Southern Pacific?

A. Yes, sir.

Q. You do not by that mean to imply that these stations on the Southern Pacific may not be so located, with reference to stations or towns on the river, that agricultural products, such as hops and things of that character, raised in between, might go to either place? You know nothing about that, do you?

A. No.

Q. You merely mean common stations?

A. Classified as points served by Willamette River boats,
8183 all points from which the boats actually received business, or to which the boats actually delivered business; and also any points that were stated by Mr. Miller, the traffic manager of the O. R. & N. Company and the general freight agent of the Southern Pacific lines in Oregon, could be reached by the Willamette River boats.

Q. And the ones that are designated as "Points on the Southern Pacific not served by Willamette River boats," are inland points, and you do not, of course, in this consider as to whether or not traffic might be hauled in from the country to the river or to the station, but merely take points that are not reached by the river boats?

A. Yes.

Q. That is what I understood.

A. That is right.

By Mr. DUNNE:

Q. These points to which attention has been called are separated, as indicated in the testimony of Mr. Miller, are they not?

A. They are, yes.

By Mr. SEVERANCE:

Q. Take Defendants' Exhibit 254. You are, I understand you, unable to state as to the amount of that traffic that was delivered at points or originated at points south of Portland and north of Ashland, which were served by the boats as well as the rail lines?

A. That we have no means of determining now. The statement gives absolutely all of the information we have concerning the traffic which is mentioned in it, except that the original statement from which this was compiled gave the traffic for each month of the year separately.

Q. Yes, but it is not otherwise classified or divided?

8184 A. Not otherwise classified.

Q. Now, take Defendants' Exhibit 257. That is the statement of freight traffic interchanged by the Union Pacific and the Southern Pacific at Ogden for the years ending June 30, 1900 and 1901. As I understand it, that covers all traffic interchanged at that point without reference to the origin or the place of destination?

A. That is correct.

Q. So that it might originate on the line of the Union Pacific and be destined to some point on the Southern Pacific, or it might originate on the Southern Pacific and be destined to some point on the Union Pacific west of the Missouri River?

A. That is correct.

Q. It might be taken up at Denver by the Union Pacific and delivered to the Southern Pacific at Ogden, or it might be brought from the River?

A. That is correct.

Q. In fact, there is no way of telling how much of this is the character of traffic that we have been inquiring into here?

A. This statement gives absolutely all the information we have concerning it.

Q. And you are unable from any records that are in existence to give it any more in detail than that?

A. That is correct.

Q. I suppose the same statement would apply, would it not, to Defendants' Exhibit 258, as to passenger traffic interchanged at Ogden for the year ending June 30, 1901?

A. We have the detailed information concerning that traffic and could furnish the origin and destination of each item of that traffic except the portion which is estimated, in consequence of——

Q. But it would be a very long job, wouldn't it?

A. Yes, it would be quite a task to compile it.

8185 Q. That is the reason you did not undertake to do it, I suppose, because of the magnitude of the task?

A. Yes, sir; we had not much time to do it and—well, we thought we would give the passenger in the same shape we gave the freight.

Q. But while you might be able to work that out if you had time enough, it still remained true that the traffic is of the same character as that shown on Defendants' Exhibit 257?

A. It is.

Q. That is, local and otherwise?

A. Local and through.

Q. Take Defendants' Exhibit 259, if you please. Are these figures simply transcripts from your annual reports?

A. They are.

Q. Filed with the Interstate Commerce Commission, and exhibited to your stockholders—or which?

A. They are a transcript from the figures given in the annual reports to the stockholders and correspond to the annual reports to the Interstate Commerce Commission. The reports to the Interstate Commerce Commission are made for each corporation separately. The reports to the stockholders give the figures for the Union Pacific system consolidated, since 1901 I think.

Q. That is, the Union Pacific, Short Line and the O. R. & N. consolidated into the one report?

A. In the one report, since 1901, I think.

Q. As I understand it, the figures on Defendants' Exhibit 260 are the revenues of the Southern Pacific, including the Texas lines, as you stated yesterday, and these figures are also taken from the annual reports?

A. They are taken from the annual reports of the Southern
8186 Pacific Company. They include the lines of the Southern Pacific Company, Pacific System, and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset and the Central lines and Southern Pacific Company's Atlantic Steamship lines.

Q. It includes all the water and rail lines owned by the Southern Pacific, doesn't it?

A. It does not include the Southern Pacific Company of Mexico or some lines in Arizona in which the Southern Pacific Company is interested. Those have never been treated as a part of the Southern Pacific system—they have been shown separately. They have not been included in the revenues and expenses of the Southern Pacific Company, as shown in the annual reports.

Q. It does not include the revenues of any sub-company except in cases where the Southern Pacific owns all the stock, does it? For instance, it does not include Pacific Mail earnings?

A. It does not include Pacific Mail.

Q. Where you own a majority of the stock, but not all of it. It does not include the earnings from the street railway in Los Angeles, does it?

A. It does not.

Q. Or the Utah Light & Power Company?

A. It does not. The net receipts from those other companies would appear in the income account of the Southern Pacific Company.

Q. That does not appear under the head of "Other Revenue"?

A. No, it does not appear in that.

Q. This is revenue from operations only.

Mr. DUNNE. I believe that Utah Company referred to is not a Southern Pacific but a Union Pacific proposition.

Mr. SEVERANCE. No, Southern Pacific, I think.

8187 Mr. DUNNE. Mr. Loomis advises me. How is that?

Mr. SEVERANCE. I think it is Southern Pacific.

WITNESS. I am not sure.

Mr. DUNNE. I do not think it is very important.

Mr. SEVERANCE. It is all in the "pot." What is the difference?

WITNESS. I am not certain whether it is Short Line or Southern Pacific.

8188 WILLIAM DAVID LINCOLN,

recalled as a witness on behalf of the Defendants, testified as follows:

Direct examination by Mr. DUNNE:

Q. Mr. Lincoln, I hand you Defendants' Exhibit 261, and ask you if you prepared that, from what source you prepared it, and in a general way what it is.

A. This was prepared in my office, under my instructions. It is a memorandum statement showing the average miles per car, per day, on the several different lines, mostly western lines. The information was obtained from the statistical bulletin issued by the Chairman of the Committee on Relations between Railroads of the American Railway Association.

Q. I notice that the months of January and February are expressed somewhat differently. Will you explain that, please?

A. The first statement made up by the Committee of the American Railway Association included the three months of January, February and March in one item. They did not separate the three months. They started to make it up quarterly.

Q. Then you did not have the data for the months separately?

A. No, sir. They started to make up a statement of this information for every three months, and then they changed it to a monthly statement.

Mr. DUNNE. I offer Defendants' Exhibit 261 in evidence.

Defendants' Exhibit 261 (Lincoln) is as follows:

8189 DEFENDANTS' EXHIBIT 261.

(Lincoln)

Average miles per car, per day, on following lines.

[Taken from statistical bulletin prepared by chairman of committee on relations between railroads, American Railway Association.]

Month.	Un. Pac.	A. T. & S. F.	Gt. Nor.	Nor. Pac.	Can. Pac.	Tex. Pac.	C. R. I. & P.	D. & R. G.
1907.								
January	44.4	26.9	.....	17.6	.....	21.8	26.1	16.5
February								
March	.....	.....	.....	.....	.....	.....	.....	.....
April	43.6	29.1	.....	24.5	.....	23.0	27.4	15.4
May	48.7	30.0	.....	26.6	27.6	21.5	28.4	16.7
June	54.3	28.9	.....	27.1	26.9	24.8	25.2	17.2
July	40.9	25.0	27.4	27.6	26.0	23.5	24.2	16.6
August	41.4	24.5	30.3	25.4	28.1	26.7	21.8	15.4
September	38.7	26.5	30.3	24.5	25.6	26.4	22.7	14.7
October	36.7	25.5	30.6	24.5	30.3	22.3	22.3	14.4
November	36.5	24.2	27.0	25.3	35.9	21.2	23.0	14.3
December	33.6	23.4	19.0	21.4	27.2	21.1	21.9	13.4

Average miles per car, per day, on following lines—Continued.

Month.	Un. Pac.	A. T. & S. F.	Gt. Nor.	Nor. Pac.	Can. Pac.	Tex. Pac.	C. R. I. & P.	D. & R. G.
1908.								
January	36.5	25.3	12.6	17.2	25.1	20.7	21.3	12.8
February	34.5	25.3	14.0	18.1	22.4	20.6	22.4	12.5
March	38.6	26.5	15.4	19.1	29.1	21.1	23.6	12.1
April	41.1	25.4	17.1	21.0	25.1	19.2	22.5	13.7
May	37.8	23.2	17.4	20.9	21.6	19.2	19.3	13.7
June	39.5	20.6	17.3	14.9	22.8	19.8	19.7	14.4
July	41.8	22.0	19.9	21.7	25.1	21.5	22.5	14.3
August	49.3	25.2	22.0	24.0	22.5	23.7	22.6	14.1
September	48.7	30.0	29.7	25.8	25.7	24.3	23.1	15.8
October	46.8	30.2	29.1	25.6	32.2	25.0	25.9	15.6
November	45.8	31.7	26.9	21.5	37.0	26.8	23.8	15.6
December	41.8	28.2	17.8	21.5	31.9	30.3	22.8	13.5
1909.								
January	34.5	24.9	17.1	16.2	24.2	25.6	22.1	13.1
February	33.7	29.1	20.8	20.5	27.1	23.6	24.3	11.2
March	38.2	30.8	17.6	20.7	30.0	27.6	24.9	14.6
April	37.0	27.7	17.9	22.6	26.1	28.0	24.6	15.6
May	36.7	30.5	22.3	24.2	25.4	24.4	24.8	16.2
June	37.1	26.1	23.5	24.5	24.7	22.3	25.3	17.5
July	40.2	23.0	23.6	22.9	24.8	20.0	25.9	15.2
August	47.1	27.6	25.1	23.9	25.9	23.4	26.7	13.8

W. D. LINCOLN,
Supt. Trans.

OMAHA, *March 22, 1910.*

8190 Cross-examination, by Mr. SEVERANCE:

Q. The figures from which you made up this statement are figures, as I understand you, that are returned to this Bureau, the American Railroad Association, by the different railroads?

A. Yes, sir. The information to obtain these figures is furnished by the different railroads to the chairman of the Committee.

Q. Then, the figures themselves are not furnished by the railroads, but only figures from which computation can be made resulting in this showing?

A. The average is figured out by the Committee, but the figures to obtain this information are furnished by the railroads.

Q. You say figured out by the Committee; you mean by the representative of the Committee, don't you?

A. Yes, the clerks in his office.

Q. The man who has charge of the office—what is his name?

A. Mr. Hale.

Q. I notice on this statement tremendous fluctuations. Take, for instance, the Great Northern. I see that in January, 1908, it is as low as 12.6, and in September of the same year 29.7—considerably over twice as much. And your own road fluctuates, not as much as that, but from as high as 54.3 down to as low as 33 and a fraction. What is the occasion for these great fluctuations?

A. The greatest fluctuation there, is around January, February and March of 1908. That was after the panic in the fall of 1907. Business all over the country was very quiet, and it shows that there was very slight movement of cars.

Q. Now, take February, 1909, and it is less than it was in
8191 any of the three months you mention, January, February and March, 1908?

A. February, 1909, I will explain that by saying there was very light business movement at that time.

Q. Then, is the matter governed by the density of the traffic? Has that anything to do with it?

A. It would be density of traffic, and no doubt weather conditions had something to do with it in February, 1909, on our line. The others kind of held their own.

Q. What does this exhibit show, what does it demonstrate? What ultimate fact is shown by this average, anyway?

A. It shows the average number of miles made by each car per day. It shows that the Union Pacific Railroad gets a larger mileage out of the cars it uses for each day than other lines in the same territory.

Q. I know, but what does that signify—what is the point?

A. Well, we think——

Q. Do you mean that is more economical operation?

A. We think it signifies that we get better movement out of our cars, and no doubt more economical operation. The more mileage you get out of your cars the more economical it is to operate the railroad.

Q. I am trying to get at what that average shows. It appears by the other testimony in the case here that your freight trains run slower than those of your competitors. Take your freight train from Ogden to Omaha. It seems to be the slowest train that is shown on the table that Mr. Kruttschnitt introduced here. If that is the case, what good is it to get more use out of your cars? What advantage is that to the public?

8192 A. Our schedule on the freight train from Omaha to Ogden may show up slower than other lines, but it is the same as I said before—that all the freight is moved on a better schedule than most of the other lines.

Q. How do you know?

A. From this statement that is furnished by Mr. Hale.

Q. What statement? This does not prove how long it takes to get the freight over the road.

A. It proves that the cars make better mileage per day than the other lines; there are not so many cars lying around.

Q. It does not prove in any way that transcontinental traffic reaches California faster over the Union Pacific than it does over the Santa Fe.

A. Well, that is questionable, whether it does or not.

Q. You don't claim it does? As a witness you would not assert that on the stand, would you?

A. I will say this, that the cars handled by the Union Pacific railroad make more miles per car per day than they do by the other transcontinental lines.

Q. Well, that is not in answer to the question. I am not asking you as to what happens to all the cars on the Union Pacific system, branch lines, local business and everything else, but I am asking you whether you claim there is anything in these figures which goes to show that you are making your schedule time, which is admittedly slower than the others, and that the other lines are not making their schedule time. Do you claim there is anything in these figures that shows that?

A. I don't know what the other lines are doing.

Q. That is what I thought.

8193 By Mr. DUNNE:

Q. Is it your general proposition that these figures show that the entire public, the shippers at large, are furnished better service in the expedition of their traffic on the Union Pacific than on these other lines?

Mr. SEVERANCE. He says he does not know what the other lines are doing.

A. I would not want to answer that question, Mr. Dunne, because I don't know what the other lines are doing, but I know what we are doing.

Q. I am speaking now of the comparison afforded by the car mileage as between the Union Pacific and the other lines mentioned in your statement.

A. From the comparison it shows that the Union Pacific are getting more mileage out of the cars on their line, per day, than any other line. I would naturally infer that they were moving the cars faster, as a general proposition.

Q. That is what I was going to ask you. What do you infer from the superior showing made in favor of the Union Pacific in reference to the car mileage? What does that show, as Mr. Severance asked.

Mr. SEVERANCE. I object to that as incompetent.

Q. Mr. Severance asked what was the use of this information. Now I am asking you the same question. What does the superior showing of car mileage on behalf of the Union Pacific indicate? What is the use of that information?

A. It shows that the Union Pacific are getting a greater mileage out of each car each day than the other lines.

8194 Q. What does that mean?

A. I would say that it would mean that they are moving their general line of freight, all the freight, faster than the other lines.

By Mr. SEVERANCE:

Q. Now, let us see about that. You run your train to Denver, where you have competition, a good deal faster than you do to Ogden, don't you—your freight train? That is shown by your figures introduced here, isn't it?

A. We run the Colorado freight a little faster than we do the California freight, yes, sir.

Q. Now that freight which is thus moved faster into competitive territory is included in the totals from which these figures are made up, isn't it?

A. Yes, sir.

Q. Now, you have a very large local business in Nebraska, haven't you?

A. Quite a local business in Nebraska.

Q. Wholesaling out of Omaha and other similar movement out of Kansas City and Kansas?

A. Yes.

Q. And you run local freight trains carrying that traffic out into different parts of the respective States?

A. Yes, sir.

Q. And the movement of all those cars of course is included in these tables, isn't it?

A. Yes, sir.

Q. In fact, there is no attempt in this to segregate the different classes of freight, the different points of origin or destination, or the different conditions under which the freight is moved by one line as compared with another, is there? You take the whole movement?

A. Take the whole movement, of all the cars.

Q. Now, why is it that, say, in June, 1909, and in May, 1909, your average is so very much less than in September and August,
8195 1908? Can you give any reason for that?

A. I would say that that is on account of the heavy movement of stock in September and fruit in the fall months.

Q. That is just exactly what I wanted to develop. The character of the traffic is very important in getting at this result, isn't it? For instance, if one line during a certain month is moving a large amount of coal, we will say, or lumber, some low-class commodity like that, and another line is moving a large amount of fruit or a large amount of live stock or other freight that has to be rushed through at extra speed, that would be reflected in this average, wouldn't it, as to both lines?

A. It would depend upon the distance traveled by the freight.

Q. Is that all it would depend on?

A. Yes, sir.

Q. It would not depend at all upon the speed at which the freight was moved—only the distance? That is right, is it?

A. The speed would be a very small factor.

Q. That is the case all the time in making up these figures—the speed is a very small factor, is it?

A. Yes, sir.

8196 EUGENE S. IVES,

being duly sworn as a witness on behalf of the Defendants, testified as follows:

Direct examination by Mr. DUNNE:

Q. Mr. Ives, are you connected in any way with the Southern Pacific properties in Arizona?

A. I am.

Q. In what way?

A. As general counsel for those interests as represented and managed by Mr. Randolph.

Q. In 1900, 1901, and 1902 were there any lines in Arizona represented by Mr. Randolph—the lines that you speak of?

A. I think 1901 was the beginning, perhaps 1902; certainly no later than 1902.

Q. What were the lines in Arizona at that time?

A. The Gila Valley, Globe & Northern, the Maricopa & Phoenix; and the Arizona & Colorado was organized a little prior to that time; and the Cananea, Yaqui River & Pacific was in Mexico—terminals in Naco, Arizona, just this side of the international line.

Q. What was the Maricopa & Phoenix road in respect to its termini?

A. Its termini were Phoenix on the north, and Maricopa, which is on the main line of the Southern Pacific, on the south.

Q. Is there a point near Phoenix called Mesa?

A. There is.

Q. Where is Mesa with respect to Phoenix—east or west?

A. It is about 10 or 12 miles to the southeast.

Mr. SEVERANCE. Farther than that, isn't it?

WITNESS. Perhaps farther than that, I am not sure.

8197 Mr. SEVERANCE. I think the record shows 17. I may be mistaken.

WITNESS. Perhaps it is 17.

Q. You say you don't think it is more than 10 or 12?

A. Well, that would be my impression.

Q. What was the situation in respect to Mesa so far as any rail line was concerned?

A. The Maricopa & Phoenix went to Mesa.

Q. In what way?

A. From Tempe. Tempe is on the line of the Maricopa & Phoenix.

Q. Where is Tempe with respect to Phoenix?

A. It is about south of Phoenix, I should say about 10 miles.

Q. Maricopa is a point on the main line of the Southern Pacific, south of Phoenix?

A. Yes, about 35 miles from Phoenix.

Q. Before reaching Phoenix does the rail line between Phoenix and Maricopa touch Tempe?

A. Yes, it passes through it.

Q. And then the rail line from Mesa is projected over from Tempe to Mesa?

A. Yes.

Q. Does the Gila Valley, Globe & Northern reach a point also on the main line of the Southern Pacific?

A. Yes; Bowie.

Q. And what is its general course from Bowie?

A. Its general course is northwesterly to Globe, which is its terminus.

Q. When did your relations with these properties begin, Mr. Ives?

A. Either in 1901 or the early part of 1902, at the time the Southern Pacific acquired the Cananea & Yaqui River Railroad from the Greene Consolidated Copper Company.

Q. Do you recall the circumstance that there was some rail-
8198 road construction, to which Mr. Murphy has referred in his testimony, from Phoenix east as far as Florence and from Florence beyond, still farther east, under the name of the Phoenix & Eastern?

A. I do.

Q. When did that construction begin?

A. I think the summer of 1902. If not the summer of 1902, the fall of 1902.

Q. And that construction proceeded how far east at that time?

A. It proceeded some few miles beyond Florence; altogether, I should say, some 70 odd miles from Phoenix.

Q. Was construction subsequently pushed farther east beyond Florence?

A. Yes, it was pushed farther east, subsequently.

Q. When?

A. In 1903 or 1904.

Q. What was the ultimate point reached in that eastern construction?

A. Dudleyville, in Pinal County, Arizona, which is at the conflux of the Gila and San Pedro Rivers.

Q. With reference to the construction of the Phoenix & Eastern road, and at any time during the construction of that road or prior to the construction of that road, was it or was it not contemplated, with respect to the Phoenix & Maricopa, including the line from Tempe to Mesa, that you would build beyond and to the east?

A. It was contemplated.

Q. To what extent?

A. It was contemplated that a road should be built——

Mr. SEVERANCE. I think I will object to that as indefinite—the question "Was it contemplated." By whom was it contemplated?—that is what we ought to have.

Q. Proceed.

A. It was contemplated by the Harriman interests, acting through Randolph and myself in Arizona.

8199 Q. Now, will you proceed and state the extent.

A. It was contemplated that a line should be constructed from Mesa through in a general northeasterly direction, through Arizona and New Mexico to Durango, Colorado. The line of that road would run from Mesa to Florence, and from Florence, along the Gila River, to Dudleyville, or to a point on the Gila River, on the north side of the Gila River, opposite Dudleyville, and thence in a northeasterly direction through a canyon known as Box Canyon, or the Gila River Canyon, which is recognized as the only right of way through that mountain range, and from that point on to, as I say, and through New Mexico, up to Durango, the coalfields. On going through the Box Canyon it touches San Carlos, which is about at the easterly mouth of this canyon, which is on the main line of the Gila Valley, Globe & Northern Railroad; and that portion of the line from Mesa or Phoenix to San Carlos was designed to be available both for this contemplated line to Durango and via the Gila Valley, Globe & Northern to Bowie for a low grade transcontinental line to the Southern Pacific.

Q. Bowie is the point that you have mentioned as being a point on the main line of the Southern Pacific?

A. Yes; the beginning of the Gila Valley, Globe & Northern.

Q. In what geographical division is Bowie?

A. It is in Cochise County, Arizona.

Q. How long had that been in contemplation?

A. It had been in the contemplation of Mr. Randolph for a number of years prior thereto, when he was superintendent of the El Paso division of the Southern Pacific road, from El Paso to

8200 Yuma. That was as far back as 1897 or 1898, anyhow. I do not know whether the line to Durango was in contemplation by him at that time or not.

Q. But the other one was?

A. But that canyon as *the* best right of way for a transcontinental line was in his mind at that time.

Q. Mr. Murphy has testified here that there was some litigation betwen the Phoenix & Eastern and a corporation called the Arizona & Eastern, and he has said in a general way that the litigation resulted in leaving them in undisturbed possession of the disputed premises and in establishing their rights thereto. I think I am fairly stating the general way in which he put it. I will ask you to state briefly, if you will, and if you know, what that litigation was, and its result.

Mr. SEVERANCE. If the result was a judgment I would suggest that that would be the best evidence. I have no objection to Mr. Ives stating the nature of the litigation, but I do object to his stating the judgment of the Court.

A. The articles of incorporation of the Phoenix & Eastern Railroad, as I ascertained prior to the institution of this litigation, provided for the construction of a road from Phoenix to Florence and along the Gila River to Dudleyville, which, as I have said, is the

conflux between the Gila River and the San Pedro River, and thence in a southeasterly direction along the San Pedro River to Benson. The Phoenix & Eastern Railroad Company, under the general railway law of 1875, filed its map of definite location for such a line of railroad, going along the south side of the Gila River from a
8201 point east of Florence to Dudleyville and thence along the westerly side of the San Pedro River down to Benson.

Mr. SEVERANCE. Just a moment, Mr. Ives. I desire to interpose an objection to the statement of Mr. Ives as to the contents of maps that are on file, as not the best evidence; and object to any further testimony from Mr. Ives as to the contents of written instruments. I said that I had no objection to his stating in general the character of the litigation, if he was counsel in it, but I do object to this sort of testimony as to the contents of maps and filings, etc., as not the best evidence.

Mr. DUNNE. Proceed, Mr. Ives.

Mr. SEVERANCE. The objection may stand to all testimony of this character, may it not?

Mr. DUNNE. Certainly.

WITNESS. It is my intention to state this as explanatory of the litigation, and not as proof of the map. This right of way was approved by the Secretary of the Interior, in October, 1902, and the Phoenix & Eastern continued its construction along such right of way. We knew of this construction, and interposed no obstacles or objection of any kind to it. In December, 1903, the grading force of the Phoenix & Eastern having at that time reached a point between Florence and a place called Kelvin, on the south side of the Gila River, about two miles west of Kelvin, commenced to throw a bridge across the Gila River from the south side to the north side, departing from its right of way, and when that fact was called to our attention we recognized that a line of railroad by the Phoenix & Eastern on the north side of the Gila River would preëmpt the approach to the
8202 Gila Canyon, which has——

Q. May I interrupt you there to ask you this question: Whether it was in your judgment or in your belief at the time you speak of, whatever the contents of the map may have been, that a map of definite location had been filed and approved as you suggest?

A. Yes, it was.

Q. Now, proceed, Mr. Ives.

A. As I say, when the Phoenix & Eastern moved across to the north side of the Gila River, we recognized that a line on the north side of the Gila River would encroach for right-of-way purposes upon territory which it was in our contemplation to use for this line with respect to which I have testified; and we thereupon at once organized the Arizona Eastern Railroad Company, with a charter right to construct a railroad through that territory, and commenced a survey, beginning from the east at San Carlos, through the Gila Canyon, down toward Florence. We proceeded and filed our maps through the Gila Canyon before they had—well, they had not made

any survey through the Gila Canyon, but they were surveying a strip of territory on the north side of the river, about 16 or 18 miles in length, from this point some two miles west of Kelvin to Dudleyville. We then continued our survey, having surveyed through the canyon and filed our maps covering the right of way through the canyon,—we continued our survey from Dudleyville on to Kelvin, our survey covering the same territory which they were surveying, and both surveying parties working with the utmost despatch, each aware of the fact that the other was endeavoring to secure this same territory, under the general railroad act.

8203 Q. Was that the time the rocks fell, that Bro. Severance asked Mr. Murphy about?

A. No; the rocks fell, I think, a trifle after that. The surveying parties did not do any blasting. But the two maps were filed by the two companies, on the same day—our map was filed two hours ahead of theirs—and then the litigation commenced. In the meantime our railroad, following its right of way, commenced to construct from the east westward; and they, following the line which they had already built, from Phoenix to Florence and beyond, were constructing from the west eastward, and at various points along the rights of way claimed by both of us. Our line was some 15 or 20 feet in altitude over their line, but both lines were within the limits of 200 feet allowed for right-of-way purposes by the act of Congress. Now, on that there were several places where there was considerable rock to be blasted—in fact, there was rock to be blasted all along it, practically all along it, but at some places more than others; and each side, anxious to construct and fortify itself by construction, in the inevitable contest in the courts and before the Secretary of the Interior, threw its grading parties out in advance of their regular work toward these rocky points, and at one time both of us were working at the same rocky point, and I believe that when they blasted some of their rock would reach our right of way, and when we blasted some of our rock reached their right of way.

Mr. SEVERANCE. If they were 15 or 20 feet below you, they must have been blown up on to your right of way.

WITNESS. Yes, blown up.

Mr. SEVERANCE. Kind of Vesuvius eruption.

8204 WITNESS. When we met at that point in this way, we both appealed to the courts; both actions were commenced separately, each asked for preliminary injunction, and the court granted a preliminary injunction directing that each party should proceed in its grading at the place where the camp regularly was, so as not to interfere with the other, and we retired from this rocky point and they retired from the rocky point. We went back to the end of our completed grade line on the east and they to theirs on the west, and each continued to construct, they eastwardly and we westwardly, until we met, and when we met, the force of that injunction order had of course lapsed, and they appealed to the courts and we fought out another temporary injunction, and they were granted a tempo-

rary injunction restraining us from building any farther, under the protection of which they proceeded and tore up our old graded line, wherever it was necessary to tear it up in the construction of their own, and constructed a line over the disputed territory.

Q. The disputed territory being——

A. Being this 18 miles on the north side of the Gila River between Dudleyville on the east and a point two miles west of Kelvin on the west. Then the case came to trial, while they were completing their construction work, and upon the trial we prevailed and obtained a judgment perpetually enjoining them from building or interfering with us on any portion of this disputed territory. From that they appealed to the Supreme Court of the Territory of Arizona, and the Supreme Court reversed the judgment on the ground that the courts had no jurisdiction over the permanent rights of either party
8205 pending the contest before the Land Department, such contest having been undetermined at the time of the trial of the suit. So that the judgment was reversed, and the court held that it had jurisdiction to adjudicate only the temporary rights of the respective parties to the territory pending the determination of the contest before the Land Department; and in view of the fact that they had a constructed railroad at the time the Supreme Court rendered the determination, they were given a temporary injunction in this judgment.

Q. Did the litigation go forward?

A. From that we appealed to the Supreme Court of the United States, and that appeal was perfected and docketed in the Supreme Court and pending at the time of the contracts which resulted in the acquisition of the Phoenix & Eastern by the Southern Pacific people, and the appeal was dismissed.

Q. At the time the litigation was pending, including its pendency in the Supreme Court of the United States, was it in your mind or within your knowledge that the Phoenix & Eastern people in departing from the right of way upon the south bank of the river and going over to the north bank and re-filing upon the north bank, had relinquished their filing upon the south bank?

Mr. SEVERANCE. I object to that as incompetent, speculative, immaterial, and asking for a conclusion of law.

A. Shall I answer?

Q. Yes. I wish to develop your knowledge and conduct in the premises, that is all.

A. When the Phoenix & Eastern filed their map on the same day that we filed ours, or definitely located this 18 miles of territory on the north side of the river, attached to their map was a relin-
8206 quishment, or a document in the nature of relinquishment, whereby they relinquished their right of way acquired in October, 1902, to the corresponding 18 miles on the south side of the Gila River, such relinquishment, however, by its terms being effective only upon the approval of the map filed by them on the 14th of March, of amended location. We contended that inasmuch as it was recognized that a railroad company cannot have two rights of way

and inasmuch as this relinquishment was conditional at the time we filed it, that at the time they filed theirs and therefore at the time we filed ours, they actually had a right of way on the south side of the river and therefore could not initiate a right of way on the north side of the river, and that therefore our right of way was superior.

Q. Then, that contention was a part of the litigation to and including its pendency in the Supreme Court of the United States and at the time when these contracts and adjustments were made?

A. It was, and in which we had great confidence.

Mr. SEVERANCE. I think I will move to strike out the last statement of the witness, as being a matter of legal opinion.

Mr. DUNNE. I think in view of the attitude of the parties and the testimony of Mr. Murphy I cannot consent to that motion to strike out.

Mr. SEVERANCE. And I object to any additions thereto likewise, as incompetent, if they are along the same line. Of course Mr. Ives is a lawyer and he must realize the limits.

WITNESS. I testify with full realization of the limits, Mr. Severance,—that their lawyers expressed themselves as having grave apprehension of that position.

Mr. SEVERANCE. I suggest that that should be stricken out
8207 on the ground that it is pure hearsay; and if Mr. Ives is doing his best to keep within the limits of proper testimony, they must have different rules in Arizona than in other parts of the country.

Mr. DUNNE. We will not discuss that question. I think, with great respect for Mr. Severance, that the attitude and the purposes and the conduct of both parties in this matter, and the motives that lay back of their conduct, are all material in this case.

Mr. SEVERANCE. You will hardly claim that it is proper for Mr. Ives to testify as to statements made to him by counsel on the other side of the litigation. I don't believe you will contend that.

WITNESS. Mr. Severance, may I, outside of the record, in order that you may not misapprehend my meaning——

Mr. SEVERANCE. It is all going in the record. I don't care anything about it at all.

Mr. DUNNE. We think this is competent evidence in view of the testimony already introduced in this record.

Q. Now, you have testified here, Mr. Ives, that the articles of incorporation of the Phoenix & Eastern contemplated Benson as the terminus in the eastwardly direction?

A. Yes.

Mr. SEVERANCE. I object to that as incompetent.

Q. Have you the excerpt from the articles of incorporation with you?

A. I have. It is only to refresh my memory. I have not a certified copy.

Mr. SEVERANCE. I object to the use of it as not the best evidence.

Q. The original articles of incorporation are filed in the
8208 Territory of Arizona, are they not?

A. Yes.

Q. Will you just read that, Mr. Ives?

Mr. SEVERANCE. I object to that as incompetent.

A. (Reading:) "Article VII. That the place from and to which the proposed road is to be constructed and the counties into and through which it is intended to pass, and its length as near as can be set forth are as follows, to-wit:

"Beginning at a point in the City of Phoenix in the County of Maricopa in said Territory, at a point of intersection with the railroad track of the Santa Fe, Prescott & Phoenix Railway Company, in said city, thence in a southeasterly direction through the counties of Pinal and Pima to the City of Benson in the County of Cochise in said Territory of Arizona, a distance of about one hundred and eighty-five miles, more or less, with power and authority to extend such line to any other point or points in said territory and to build to and from the same such branch lines as said company may decide."

Q. At the time of the construction by the Phoenix & Eastern and up to the time of their departure from the south line and their crossing the river to the north line two miles west of Kelvin,—up to that time was it in your mind and in your knowledge that the Phoenix & Eastern by its articles of incorporation contemplated the construction which you have just read?

Mr. SEVERANCE. I object to that as immaterial.

A. It was.

Q. During the process of the construction of the Phoenix & Eastern from Phoenix to Florence and beyond Florence and along the south bank of the Gila River to the point of departure, where they crossed to the north bank two miles west of Kelvin,—
8209 during that entire process of construction and with the knowledge in your mind that they contemplated a road to Benson as the terminus, did you take any steps or do anything in any way, shape or manner to interfere with or obstruct the construction or progress of their enterprise?

A. We did not.

Q. Did you make any survey of the Box Canyon at any time prior to their departure from the south to the north bank?

A. I think there had been a reconnoissance survey made by Randolph, but we made no survey with a view to filing any map of definite location.

Q. That is the survey I have in mind. That was not made until afterward?

A. No.

Q. During the construction of the Phoenix & Eastern, and more particularly during the litigation itself, what was the position and contention of the Phoenix & Eastern, Mr. Murphy and his people, with reference to the proposed terminus of the Phoenix & Eastern, as to whether it was a road to Benson, or whether it was a road continuing on from Dudleyville to Deming?

WITNESS. That I made myself, from the transcript of the testimony.

Mr. SEVERANCE. I make the same objection—incompetent, irrelevant, and immaterial.

A. Mr. Drake testified:

"I am familiar with the change of location of the Phoenix & Eastern Railroad Company's line between Phoenix and Benson, beginning at a point near Kelvin and crossing the Gila river and extending to a point near Dudleyville. Before this change was made I examined the ground personally, rode and walked over it at various times, and advised the locating engineer to begin the work of making the surveys. From my examination of the ground it appeared to me, as an expert railroad engineer, that by crossing from the south side of the river, on which the first location had been made, to the north side and following it, including along the San Pedro River, for a distance of seventy-five or eighty miles that an improved line might be obtained—improved in the matter of alignment and saving in degrees of curvature and in avoiding conflicts with wagon roads. It also appeared that the future operation of the line might be less obstructed or interfered with by flood waters, by the drainage from the mountains, and that there were better prospects of revenue, traffic revenue, from the north side than from the south side. The resources of the country seemed to have developed in the meantime between surveys, and there was a better outlook for traffic on the north side. This examination of which I speak was made about the first of
8214 December, 1903; that is, the more definite investigations. It had been looked at in a desultory sort of way, even before that. By alignment, I mean less curvature, less sharp curves, less on the north side, affording easier curves and fewer of them. It is my recollection that we would save something like six hundred degrees of curves in the eighteen miles along the Gila River, of this disputed right of way, which begins at a point about a mile and a half west of Kelvin and extends a distance of fifteen or sixteen miles easterly. The elimination of this number of degrees of curvature is very valuable in the future operation of the road." Now, during the course of this litigation——

Mr. SEVERANCE. Isn't that a complete answer?

Mr. DUNNE. Proceed.

Mr. SEVERANCE. Just a moment. I want to be sure that I get my objection in. I think you simply asked him to state what he testified to.

Q. If you desire to add anything else in the way of explanation, I will ask you to do so.

Mr. SEVERANCE. I will object. I am very helpless; I don't know what the question relates to.

Q. Proceed, Mr. Ives; answer.

A. The litigation prior to the trial consisted in numerous applications for temporary injunctions and motions to dissolve them. Those applications were chiefly addressed to the discretion of the court

and on questions of good faith by the respective parties. We contended——

Mr. SEVERANCE. I object to that as incompetent and immaterial.

8215 WITNESS. We contended throughout these preliminary applications to the Court that their best line to Benson, which was their exclusive charter terminus, was along the south side of the Gila River, and that they had taken advantage of their opportunity, by being close to Kelvin and having a railroad behind them to convey their supplies, to cross over to the north side, and by filing a map secured for five years a right of way over the approach to the Box Canyon and perhaps the canyon itself in order to obstruct the contemplated line of ours, which they knew we contemplated. That was our contention. The courts were impressed by that, and to meet that contention——

Mr. SEVERANCE. I move to strike out the statement "The courts were impressed," as not the best evidence.

WITNESS. The courts appeared impressed. I will correct "was impressed," and say the courts appeared impressed by that. To meet our contention they filed affidavits and gave this testimony to the effect that their purpose in going on the north side of the river was simply for the reason of the curvature and perhaps increased local traffic; and never, until I read it in Mr. Murphy's testimony in this case, had he or any of the persons interested in the Phoenix & Eastern Railroad and in that litigation mentioned the fact that they contemplated this low-grade line with respect to which he here testified.

Q. Were these facts and this history that you have testified to in your mind and before you up to and including the pendency of the litigation in the Supreme Court of the United States and the making of the contracts referred to?

Mr. SEVERANCE. I object to that as immaterial and incompetent.

A. Yes.

8216 Q. Did you at any time, Mr. Ives, from first to last, intend to interfere with or obstruct the construction of any line to Benson?

Mr. SEVERANCE. Same objection.

A. We did not.

Q. Did you at any time, from first to last, in this litigation, intend to interfere with or obstruct the construction that was then proceeding under the auspices of the Phoenix & Eastern, except to the extent of conserving your interests in the essential canyon that you speak of—the Gila or Box Canyon?

Mr. SEVERANCE. I object to that as incompetent, irrelevant, immaterial, and asking for a conclusion.

A. We did not.

Q. What became of your proceeding in the Supreme Court of the United States?

A. The appeal was dismissed after the Phoenix & Eastern was taken over by the Harriman interests.

Q. Had the Phoenix & Eastern been taken over by the Harriman interests prior to the lodging of your appeal in the Supreme Court of the United States?

A. Not until long after that. I know Mr. Murphy says that appeal was never perfected. He is wrong in that. It was perfected and docketed in the Supreme Court of the United States.

Q. Some reference has been made by Mr. Murphy to the circumstance that there was a washout during this litigation and that an arrangement for trackage or leasing in respect to a certain gap in their line was reached between the Phoenix & Eastern and your people. What is the history of that matter?

A. Pending the litigation and prior to the decision of the Supreme Court of the Territory, which was in the latter part of
8217 March, 1905, I think, possibly 1906, there were very heavy floods in the Gila River, as the result of which about a mile of the road which had been constructed by the Phoenix & Eastern over this disputed territory was washed out—not the railroad tracks simply were washed out, but the territory itself was washed out, and the course of the Gila River changed, so that the Gila River flowed for that distance right on this disputed right of way, on about half a mile of this disputed right of way, and I am advised does yet. We were advised of that fact prior, I assume, to the advices of it by the Phoenix & Eastern people; and our engineers surveyed a line about four miles in length, not of course on this disputed territory which was, as I say, then occupied by the river, but from one point on the disputed territory to another point on the disputed territory, and filed a map of amended location upon it and obtained an uncontested title to the right of way of that four miles right in the body of this disputed territory and essential to any railroad company that would operate the railroad which had been built by the Phoenix & Eastern people. When the Phoenix & Eastern people recognized that we had that right of way and that they could not fill up this gap in their line without our consent, they came to us with a proposition which resulted in negotiations which culminated in our building a line of railroad over that four miles (I may be wrong as to the precise distance of the gap) and we leased it to them, they becoming our tenants for it at a rental amounting to five per cent of its actual cost of construction to us, one of the provisions of the lease being that it was determinable at our will on ninety days' notice. This was prior to the contracts in this present litigation.

8218 Q. With a little more particularity, Mr. Ives, at what point in the history that you have detailed was this convention between the Phoenix & Eastern people and your people in respect to this gap and the lease thereof?

A. The negotiations commenced immediately after we had filed our maps, which, of course, was immediately after the floods, and the negotiations were conducted rapidly, in order that the road might

be constructed and they could resume the operation of the 80 or 90 miles of railroad which had been built to Dudleyville.

Q. Do you recall where the case was, in what forum, at that time?

A. The floods took place during the winter, when the case was argued in the Supreme Court of the Territory. The Supreme Court meets about the middle of January and hears arguments, and renders its decisions about the 30th of March.

Q. What year are you now speaking of?

A. I think the year was 1905; it is possible it was 1906, but I am very confident it was 1905.

Q. As a part of this history, illustrating the conditions in Arizona as between the Phoenix & Eastern and the Arizona Eastern, was the position of the Phoenix & Eastern people made manifest to you or to Mr. Randolph, so far as you know, by any other declaration of any officer of the Phoenix & Eastern, or I will limit it to the two principal officers, Mr. Murphy and Mr. Drake?

A. Yes; by a letter from Mr. Drake to Mr. Randolph.

Q. Have you that letter?

A. I have.

Q. Do you know Mr. Drake's signature?

A. Yes.

Q. Is it attached to that letter?

A. It is.

Q. Subscribed by him?

A. Yes.

8219 Mr. DUNNE. I will offer that letter in evidence, and ask to have it read into the record.

Mr. SEVERANCE. This letter was written long after the whole thing was wound up and the road turned over. You don't pretend that is evidence? This letter was written April 23rd, 1907.

Mr. DUNNE. I think it is evidence, in view of the testimony of Mr. Murphy.

Mr. SEVERANCE. How long after the Phoenix & Eastern had been taken over by the Harriman interests was that letter written?

WITNESS. I think it must have been certainly six months, possibly more.

Mr. SEVERANCE. I object to the letter as incompetent, irrelevant, immaterial, and hearsay.

The letter produced by the witness was marked Defendants' Exhibit 262 (Ives), and is as follows:

DEFENDANTS' EXHIBIT 262.
(Ives.)

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY
(and leased lines).

W. A. DRAKE,
Vice-president and
Assistant-General Manager.

PRESCOTT-ARIZONA, *April 23, 1907.*
File 54.

Mr. EPES RANDOLPH, *Pres't,*
Maricopa & Phoenix Railway,
Tucson, Az.

DEAR SIR:

I have thought it best to address you about as follows:

8220 The Phoenix & Eastern Railroad was originally designed and built as a cross-country railway for the country's development, expecting to tie to other roads at Benson, Arizona, and the only construction features which had in mind a through freight trunk line were those of the superstructure of Bridges 89 and 117 and the substructure of the latter.

For the reasons just given, there are many things in connection with the construction which are not at all in consonance with the requirements of heavy freight carrying roads of this day, and I may be excused for drawing your attention thereto instead of permitting yourself and your subordinates to find these things and follow with unfair criticism because of them, although you may have fully investigated these features long ago.

There are some 8 and 10 degree curves which may be reduced without great expense. There is one 14 degree curve at the Salt River bridge which may be reduced by carrying the curved line upon the bridge.

At the Salt River bridge the shore line of the canal at the north end must be watched closely, as it is likely to undercut at times of high water. The piles under the concrete piers in the main river are supposed to be driven to cemented rock. Outside of the piers, rows of piles have been driven and the intermediate space filled with rocks, second-hand steel, etc., and I believe are now safe, but the filling should be watched. The lost pier was not so protected, hence its loss. The concrete piers in this bridge would better have been carried down to bedrock instead of being founded on piles, but this would have necessitated pneumatic foundations, which were not at the time considered necessary.

8221 At Bridge 89, which is the first Gila crossing, the north pier, or abutment, was designed for a short span and afterward enlarged. The piles are driven to solid rock. Rows of piles are driven outside of this pier and the intermediate space filled with large rocks. This filling should always be watched after high water, although it has stood several high water periods without harm; but until the rock has settled to a permanent bearing, it should, as I say, be closely watched.

There are several points where the river threatens the embankment. We have driven a good many piles at these places and made some second-hand timber cribs filled with rocks, using old mine hoist cable, barbed wire, mesquite brush, etc., and all of the points in question are fairly safe, unless it may be one at a point about a mile west of Burns siding upon the Burns and Locust ranches. This place should be watched closely until it is more thoroughly protected. All the others of course need watching, but they have withstood very high water, the November flood having reached the maximum line. All the riprap which we placed last year has done perfect service, but there are places where more may be used with advantage. If the road should become a through freight trunk line, the pile should be replaced with heavy riprap. I need not advise you that it is well to use brush, wire cable, barbed wire, willow trees, etc., in the riprap wherever possible.

You will have observed that all the rails with which this track was laid are second-hand rails, and in certain places many of them were in bad condition. But little track repair work has been done upon the line east of Kelvin, and, for that matter, the number
8222 of section men employed has been very small at all times. All of the bridges were pile bridges built for a good branch railway, but not for the very heaviest freight locomotives.

Had the construction of the railway been initiated in the light of present information, it is likely that said construction would have been different.

I presume you will agree with me that, so far as the future may be consistently contemplated, all railroads should be built to conform to the requirements as they now appear to us; in other words, it is a waste of money to build a branch line with little traffic under the specifications of a main through heavy freight line—construction work should be consistent with the business in view as far as such business can be foreseen.

Very truly yours, (Sgd) W. A. Drake.

(Stamp: Office of President, Tucson, Ariz., Apr. 24, 1907.)

Witness. Now, in reply to your question as to any other declaration made by the Phoenix & Eastern people, I have an excerpt from the complaint, which was verified, in this Arizona suit.

Q. I want to call your attention to that; but with respect to this letter of Mr. Drake; so far as you know, this was the last of the
8223 series of declarations upon this subject, that you are aware of or have had access to?

A. As far as I know, that was the last; that was virtually a letter from Mr. Drake as he ended his association and connection with the railroad. After the contract he stayed and helped us out for a while, and I think this ended his connection.

Q. You have endeavored to make this history as complete as possible?

A. I have.

Q. Now, I call your attention to the pleading in the litigation, and ask you whether, prior to the actual trial of the case, it was in your mind that the pleading of the Phoenix & Arizona expressed any position or contention of theirs touching the matters in controversy between them?

Mr. SEVERANCE. I object to any statement as to the condition of Mr. Ives' mind, or what may have been in it or what may not have been in it at that time, as incompetent, immaterial and irrelevant to this controversy.

A. It was.

Q. Have you the transcript of the pleading?

A. I have an extract from the amended verified complaint of the Phoenix & Eastern Railroad Company in that litigation.

Q. Will you please read it.

Mr. SEVERANCE. I object to that as incompetent, and being only a fragment and a copy of a fragment, and not the best evidence.

A. (Reading.) "That in December, 1903, the President of said plaintiff company (Phoenix & Eastern) directed its chief engineer to survey a line for a railroad, which would cross the Gila River at some convenient and desirable point east of Florence, and con-
8224 tinue on the north bank of said river to Dudleyville, and thence by a convenient and desirable route to a connection south of Dudleyville with the survey which had theretofore been made."

Q. I think I called your attention to the articles of incorporation.

A. Yes.

Q. Now, Mr. Ives, have you stated with tolerable fullness the history of the collision, if such it may be called, between the Phoenix & Eastern and the Arizona Eastern and the conduct of the parties therein? You have stated that, have you, with tolerable fullness?

A. I have.

Cross-examination by Mr. SEVERANCE:

Q. Mr. Ives, you stated that both the Phoenix & Eastern and the Arizona Eastern, [illegible]r company, filed maps in the local Land Office claiming this disputed right of way. I believe you did not testify—if you did I did not notice it, in answer to Mr. Dunne—as to whether the contest over that right of way was decided by the Land Office.

A. The Secretary of the Interior decided, after the trial in Arizona, adversely to our contention.

Q. That is, he decided against you?

A. Against us.

Q. And gave the right of way to the Phoenix & Eastern?

A. And gave the right of way to the Phoenix & Eastern.

Q. The Supreme Court of the Territory also defeated you?

A. No. The Supreme Court of the Territory held that it had no jurisdiction.

Q. Yes, but gave Mr. Murphy's company the right to remain in possession?

A. Temporarily.

Q. Pending the decision of the Land Department. The result of your being beaten in the Supreme Court of the Territory and
8225 thereafter being beaten by the Secretary of the Interior was that the Phoenix & Eastern was left as the owner of that right of way?

A. No, it was left in temporary possession of it, with leave to us, after the determination by the Secretary of the Interior——

Q. No, you don't understand my question.

Mr. DUNNE. I would like to have Mr. Ives finish his answer.

WITNESS. The decision of the Supreme Court of the Territory was that until the Secretary of the Interior determined the matter pending before him, the courts had no jurisdiction. After the determination of the Secretary, whatsoever it might be, the Supreme Court of the Territory said that the courts had the right to determine whether or not the Secretary erred in any matter of law; and we had authority by virtue of the decision of the Supreme Court of the Territory, by language employed by it in its decision, to institute such action for that purpose, as we might see fit, after the Secretary should have abandoned jurisdiction by rendering a final decision.

Q. Have you ever instituted any such action?

A. We did not propose to until the Supreme Court of the United States had perhaps reversed the Supreme Court of the Territory.

Q. You still had hopes. Although you had been beaten by the Supreme Court of the Territory and although you had been beaten by the Secretary of the Interior, you still lived in the hope that possibly the Supreme Court of the United States might reverse the Supreme Court of the Territory.

A. We had not been beaten by the Supreme Court of the Territory, and we had absolute confidence that the Supreme Court of the United States would reverse it.

8226 Q. In the report of the decision it is indicated that Mr. Ives was counsel for the defeated party in that litigation.

A. The Court held against the contention of both sides, that it had no jurisdiction. It did not pass upon the question as to who owned that right of way.

Q. But it left Mr. Murphy in possession of the right of way; it didn't give you the right to enter into possession?

A. No.

Q. And the Secretary of the Interior held that you had no right to that right of way?

A. The Secretary of the Interior approved their maps.

Q. And in effect the approval of their maps gave them the right of way, when you were endeavoring to have your maps approved instead of theirs?

A. I think not. I think the courts would have to determine that.

Q. So far as the Secretary of the Interior could settle the disputed questions of fact as to who was first there or who was entitled to the right of way, you were beaten, weren't you,—so far as he could decide it?

A. I do not think there were any disputed questions of fact bearing upon the ultimate rights of the parties.

Q. It is a fact, isn't it, that so far as the litigation pending before the Secretary of the Interior was concerned, you were defeated?

A. That is true, yes.

Q. And you were there trying to win your case, and failed?

A. Yes.

Q. Now, Mr. Randolph is the representative, is he not, in the southwest of what are called the Harriman interests?

A. Yes.

Q. You were merely his counsel?

A. Well, yes, in one sense, I am——

8227 Q. Well, counsel for the railroad corporations that he represents.

A. Yes. And I am a director in most of them, and in all of them I think, and during all of these times served as secretary, and organized them. I think my relation was something more than that of mere counsel.

Q. Now, the Southern Pacific, as you have testified, previous to the construction of the Phoenix & Eastern, had its own line from Phoenix to Mesa?

A. Yes.

Q. And you testified that in your opinion it was only 10 or 12 miles from Phoenix to Mesa?

A. Yes.

Q. And you afterwards said it was about 10 miles from Phoenix to Tempe?

A. Yes.

Q. It is about 17 miles, isn't it, from Phoenix to Mesa?

A. Probably; I don't know. I think I was figuring across country when I gave my statement.

Q. That is out in the valley of the Salt River?

A. Yes.

Q. A very broken region?

A. Very.

Q. Then the line of the Phoenix & Eastern, if it had remained in possession, would have been competitive with the line of the Southern Pacific from Mesa to Phoenix, would it not,—reaching the same points?

A. Yes.

Q. And would also have been competitive with any extension of your line from Mesa up toward this Box Canyon?

A. Yes.

Q. How long after you were beaten by the Secretary of the Interior was it that the Santa Fe turned over this line that it had constructed to the Southern Pacific?

A. I should say over a year.

Q. Did you have anything personally to do with the negotiations that resulted in that matter, or was that all conducted here in

8228 New York between Mr. Morawetz and Mr. Harriman?

A. I had nothing to do with the negotiations so far as they were carried on with the other side, with the Santa Fe people.

Q. That is what I mean.

A. Nothing whatever.

Q. That was done here in New York?

A. I don't know where it was done. It was not done in Arizona.

Q. Has the line of the Phoenix & Eastern been constructed down to Benson?

A. No; they stopped work——

Q. I say have you constructed it since you acquired the company?

A. No.

Q. It has never been built to Benson?

A. No. They stopped work on it long before they sold out to the Southern Pacific.

Q. How long before? You say "long before."

A. Why, they never did any work beyond Dudleyville.

Q. How long before they sold out to the Southern Pacific did they reach Dudleyville?

A. Why, I should say a year before. There was no contest beyond Dudleyville at any time. They could have been working at Dudleyville from 1903 on.

Q. I understand all that. I am not asking you that. I merely asked you a simple question which you have already answered. How far is it from Dudleyville to San Carlos?

A. I am very poor at distances, as I have shown, but I should guess about 40 miles.

Q. San Carlos is on the other side of the canyon?

A. Yes.

Q. The canyon runs between Dudleyville and San Carlos?

A. Yes.

Q. And this right of way that was in dispute is not part of the canyon proper?

A. No; it is the mouth of the canyon; the approach to the canyon would be more proper.

8229 Q. And you say that both lines were building—they building lower and you building higher up?

A. Yes.

Q. Along that approach?

A. Yes.

Q. And there was plenty of room there, wasn't there, for two roads to run, one running at one grade and the other at another?

A. Well, two roads could have been built, but if there had been two rights of way the construction of a road on another right of way than the one in dispute would have cost, so the engineers said, about $200,000 more.

Q. You said you were building on a grade 15 or 20 feet above their grade?

A. Yes, but on the same right of way, within the limits.

Q. Within 200-foot limits?

A. Yes.

Q. But in the east here a railroad right of way is only one hundred feet wide as a rule. There was plenty of room there for two roads with 100-foot right of way for each, wasn't there?

A. Well, I presume so. I don't know. The river flows up and down—not there it doesn't

Q. At any rate, you were both going upon the assumption that two lines could have been built because you were building on different levels, side by side, weren't you?

A. Well, it is a question between engineers as to what would be—of course the lower grade is the cheapest to build, but the higher grade is less liable to wash out.

Q. I was not asking you as to which was the better line, or anything like that. I merely asked you if it was not a fact, as I infer from something you said in answer to Mr. Dunne, that both
8230 lines were actually building there, one on one level and one on the other?

A. Well, at parts.

Q. At parts of the way?

A. Yes; at parts they were on the same level, I suppose.

Q. Had the Southern Pacific line reached San Carlos from the east?

A. From the east?

Q. Yes.

A. The Gila Valley, Globe & Northern passed through San Carlos.

Q. How far through it?

A. Through Globe; I suppose some 20 or 25 miles.

Q. It did not pass into the canyon from San Carlos?

A. No.

Q. To get a perfect picture of the situation before us: there was this canyon, about 40 miles long, from Dudleyville to San Carlos?

A. Yes.

Q. And that was unoccupied by any railroad?

A. Yes.

Q. West of that canyon was this 18-mile strip that was in dispute?

A. Yes.

Q. The Southern Pacific line going up to Globe from Bowie reached San Carlos or passed through there?

A. Yes.

Q. The Santa Fe line, built toward the east, reached the westerly end of this disputed strip undisputed, as I understand it?

A. Yes.

Q. That is the picture of the situation?

A. That is the picture of the situation, precisely.

Q. And the controversy in the Land Department and in the courts was about this 18 miles?

A. Yes.

Q. And I think you said you were advised that the Santa Fe had also put some surveyors in the canyon.

A. No.

Q. Then, I misunderstood you.

A. My first advice of that was Mr. Murphy's testimony to that effect in this case.

8231 Q. Oh, that is what you stated?

A. Yes. They disavowed that they were going through the canyon.

Q. Has the line now been built through the canyon?

A. It is being built, but we have had trouble. There is an irrigation enterprise under the reclamation service contemplated there, and they want us to change our line by elevating it, and the dispute is going on. I have been told that it was decided by the Secretary in our favor, in the past few days, but I don't know whether it has or not. We did do a lot of construction work in the canyon.

Q. How long ago did you begin that construction work in the canyon?

A. I believe (although other officials are better able to testify) that we expended more than a million dollars there.

Q. I say, when did you begin it?

A. We began it about the time this litigation commenced.

Q. Shortly after that?

A. Yes.

Q. Up to the time that the Phoenix & Eastern were constructing their line you had not filed any maps of the canyon, had you?

A. None whatever. You mean up to the time they moved over to the north side of the river?

Q. Yes.

A. No. We commenced activities then.

Q. So this contemplation that you speak of, of building a line up to Durango, was something that existed in the minds of Mr. Randolph and yourself, and had not resulted in surveying a line or filing maps?

A. Well, partially. Three companies were organized for that road to Durango—the Arizona & Colorado of Arizona, the Arizona & Colorado of New Mexico, and the Arizona & Colorado of

8232 Colorado. The Arizona & Colorado of Arizona had been organized prior to December, 1903, when the Phoenix & Eastern undertook to go to the north side of the river.

Q. Had you done anything more than to organize a corporation?

A. I don't know whether we had or not applied to the Indian Department for the right. That line is on an Indian reservation, and before you can even survey you must get permission from the Indian Department of the Interior Department for permission to make the preliminary surveys. I forget whether we had at that time applied for that permission or not.

Q. The records in Washington will show that, I suppose?

A. The records will show that. I don't remember. I know we were considerably delayed in getting that permit to go through the reservation.

8233 WILLIAM DAVID LINCOLN,

recalled on behalf of the Defendants, testified as follows:

By Mr. DUNNE:

Q. Since you left the stand my attention has been called to the circumstance that in your testimony just before you left the stand you made some reference as to the degree of speed not being of moment in the expressions of your table, and I had previously asked you a question as to whether the expedition of all freight was not illustrated by those tables. I am in some confusion as between those answers. I wish you would explain that matter a little more fully.

A. I intended to say that uniform speed had more to do with the average daily movement of the car than high speed on some trains. It is the uniform speed which raises up the daily average of the car, that is, the uniform speed on all freight.

Q. That is what I wanted to ask you. That is what you mean by uniform speed. Is that uniform speed upon all freight a factor in the expressions of car mileage exhibited in this table that you have prepared?

A. The uniform speed we make on our freight I think is the cause of the good showing which we make on that statement.

By Mr. SEVERANCE:

Q. But that does not show anything about the speed that you make on business that is not sharply competitive, but it is merely an average of everything?

A. The uniform speed will take into consideration the business which is competitive. We make very little, if any, faster time on competitive business, as you consider it, than we do on all our other business.

8234 Q. I observe by your table that you made faster time into Colorado points and into Portland than you did into Ogden?

A. Very little faster time, if any.

Q. What is the difference in the time on your fastest freight to Portland and your Ogden freight from Omaha to Greene River?

A. I would say, in an offhand manner, that there is not a difference of over 3 miles an hour.

Q. How many hours, in actual hours, is it less from Omaha to Greene River by your Portland fast freight line, where you meet the competition of the northern lines, and your Ogden-San Francisco freight train?

A. I have not a time-card with me; I could not say.

Q. It is a good many hours faster, isn't it?

A. No, sir.

Q. How do you interpret my question of "a good many hours," Mr. Lincoln? Isn't it 10 hours faster?

A. I don't believe it is 10 hours faster. It may be about 10 hours faster, but a good deal of that 10 hours can be taken up by the time of the district terminals being reduced.

Q. I know, but I am speaking of the actual schedules on which you move freight to points where you meet the competition of somebody that is fighting for business, and I am speaking now about the time of your Portland freight train from Omaha to Greene River, and I will ask you if that is not about 10 hours faster than the time of the Ogden-San Francisco freight train from Omaha to Greene River?

A. The schedule of the train is about 2 miles an hour faster.

Q. How many hours difference will that make in the time?

A. As I told you, that would be governed by some time at
8235 district terminals. We go on the schedule of the train.

Q. As you have, it seems to me, somewhat modified the statement you made in answer to my question as you were leaving the stand before, about speed not having anything to do with this matter, may I ask you this: How does it happen that there is such a large variation from month to month, if you are moving traffic at a uniform rate of speed? You run all the way from 33 miles a day up to 54. No two months are alike. There are changes of 3 or 4 miles a day, and from that on up, from month to month.

A. The conditions change at the different periods of the year.

Q. The kind of traffic that is moving has a good deal to do with it, hasn't it?

A. No, not exactly.

Q. For instance, let me ask you this: In the season of the year when your fruit traffic is heavy, your average is brought up, isn't it?

A. In the season of the year when the fruit and stock business is heavy, the average is brought up a little more, because we haven't as many idle cars lying around. You must take into consideration the idle cars in making an average.

Q. Then, as I understand it, the speed at which you move the fruit trains and the stock trains is not significant, but it is the question of idle cars, is it?

A. The regular speed is the dividing factor. We move our fruit train very little faster, if any, than we do our regular California-Ogden train. They move from 12 to 13 miles an hour.

Q. You move all the eastbound freight faster than westbound?

A. Very little faster.

8236 Q. Your westbound is less than 10 miles an hour according to your table?

A. That is the schedule, but the terminal delay on eastbound freight is not quite as long as it is on westbound freight, as I explained before.

Q. What is that?

A. The terminal time is not quite as long on eastbound freight.

Q. What do you mean by terminal time?

A. The time that a train is at a district terminal being inspected.

Q. I know, but this 9.9 miles an hour is the schedule time including stops.

A. That is the schedule time including stops.

Q. So that the matter of delay at district terminals does not cut any figure in that?

A. The delay at district terminals cuts a big figure.

Q. How?

A. Because the delay at district terminals is included in the 9.9 miles an hour.

Q. Certainly, all stops are included. Reduced to something more definite, you are 100 hours and 45 minutes, when you are on time, from Omaha to Ogden with that freight train?

A. Yes.

Q. What is your schedule on merchandise freight, or freight other than fruit and live stock, eastbound, from Ogden to Omaha?

A. Our eastbound fruit schedule is about 83 hours.

Q. I say other than fruit.

A. Other than fruit, it will run about 95 to 100 hours.

Q. So it is pretty near the same as the westbound in getting over the ground?

A. Yes. I want to explain one thing with reference to the average speed of only 9½ miles per hour from Omaha to Ogden. The

8237 schedule, outside of the time at district terminals, averages 11 to 12 miles an hour.

Q. The time you spend at district terminals does not interest the man who has stuff to ship over the line; he is only interested in the time the freight takes. He does not care whether you use it in running or standing still?

A. No, he does not care.

Q. Are you still of the impression that the fact that you run your fruit trains 10 or 12 or 15 miles an hour, or faster than you do your eastbound freight other than fruit, from one terminal to the other, Ogden to Omaha, has nothing to do with this average?

A. It has very little to do with the average.

Q. And whether there is a heavy movement of fruit, or a light movement, or no movement, does not cut much figure?

A. No, sir; it cuts very little figure. It is the uniform movement of all freight that cuts the figure.

Q. Since the fruit movement does not cut any figure, does the faster movement of live stock than that given to ordinary freight cut any figure?

A. The live stock cuts very little figure, for that is only a couple of months in the year, and the live stock is moved but very little faster than the regular freight. It is the regular movement.

Q. Then, as I understand it—if I am not correct you will correct me—you move fruit, live stock, lumber, coal, grain and everything else at practically the same rate of speed on the Union Pacific; is that right?

A. It is mighty near right—very close to it.

(A recess was then taken until 3 o'clock p. m.)

8238 Mr. DUNNE. If your Honor please, with the permission of Mr. Severance, I am offering in evidence as an exhibit in connection with the testimony of Mr. Mahl—and subject of course to the right of Mr. Severance to cross-examine Mr. Mahl if he desires—a memorandum in respect to the disposition of proceeds from the sale of the Two-Five Year 4½ per cent bonds referred to by Mr. Mahl in his testimony, and if my memory as to his testimony serves me, this memorandum is to some extent a correction of that testimony in respect to the times of the disposition of the bonds.

The paper referred to was marked Defendants' Exhibit 263, and is as follows:

DEFENDANTS' EXHIBIT 263.

SOUTHERN PACIFIC COMPANY.

Memorandum in respect of disposition of proceeds from sale of Two-Five Years 4½% Bonds.

The records show that the proceeds from the sale of $15,000,000, face value of bonds between December 1, 1900, and March 31, 1901, amounting to $14,175,000, were applied principally as follows:

Floating debt paid off	$6,600,000
Advances to the Texas & New Orleans R. R. Co., for betterments and additions, equipment and new construction of Dallas Division	2,500,000
Advances to the Galveston, Harrisburg & San Antonio Ry. Co., for deficiency in operations, betterments and additions and equipment	580,000
Advances to the Oregon & California R. R. Co. for deficiency 8239 in operations, betterments and additions and new construction	400,000
For account of steamships under construction	1,200,000
Total	11,280,000

The remainder was held as cash on hand, and was subsequently expended for additions, betterments and new construction.

The proceeds from the sale of $15,000,000 face value of bonds between June 1, 1903, and January 31, 1904, amounting to $14,425,000, were applied principally as follows:

Construction of new lines	$5,650,000
Acquisition of new lines and other property	7,900,000
Total	13,550,000

Mr. DUNNE. I will offer in evidence, if your Honor please, and have marked as Defendants' exhibit, a mileage statement of February, 1901, and supplementary to that a telegram to me from Mr. W. A. Worthington, subject of course to any right, that Mr. Severance desires to exercise, of cross-examining, checking or otherwise.

The papers referred to were marked Defendants' Exhibit 264, and are as follows:

8240 DEFENDANTS' EXHIBIT 264.

Mileage February, 1901.

1. Ogden to Roseville, including branches		1,024.62
2. Roseville (and Davis) to Portland, including branches		1,158.33
3. Roseville south to the California and Arizona Line, including branches		2,701.21
4. Mileage, Southern Pacific Lines in Arizona, New Mexico, Texas, and Louisiana, including branches:		
Arizona	481.00	
New Mexico	167.45	
Texas	2,391.07	
Louisiana	519.62	
		3,559.14
		8,443.30
Omitted:		
Sonora Railway	262.60	
Mojave to The Needles, leased A., T. & S. F.	242.51	
		505.11
Total, including omitted mileage		8,948.41
5. Mileage Union Pacific, Oregon Short Line, and O. R. & N. Co., itemized as to States and Territories:		
Union Pacific R. R.:		
Iowa	4.57	
Nebraska	1,020.44	
Wyoming	484.98	
Utah	97.76	
Missouri	.51	
Kansas	949.81	
Colorado	474.65	
		3,032.72
Oregon Short Line:		
Wyoming	92.34	
Utah	482.49	
Idaho	707.51	
Montana	[a]182.99	
Oregon	15.41	
		1,480.74
O. R. & N. Co.:		
Oregon	533.58	
Washington	473.19	
Idaho	86.82	
		1,093.59
Total, Union Pacific System		5,607.05

[a] Includes Butte to Garrison 56.59 miles operated by Northern Pacific.

8241 TELEGRAM.

Chicago, 30. Mar. 30, 1910.

P. F. Dunne.

Mileage of each line included in item two of statement sent you as follows:

Roseville to Oregon State Line	296.58
Oregon State Line to Portland	366.61
Oregon Branches:	
Portland to Corvallis	96.52
Woodburn to Natron	92.96
Lebanon Junction to Lebanon	11.50
Portland to Airlie	79.27
Sheridan Junction to Sheridan	7.18
Mohawk Junction to Wendling	15.95
Leased from North Pacific Term. Co. at Portland	1.72
Other California Lines:	
Marysville to Knight's Landing	27.75
Marysville to Orroville	25.97
Davis to Knight's Landing	18.64
Woodland to Tehama	100.84
Willows to Fruto	16.84
Total	1,158.33

W. A. WORTHINGTON.

R 11.00 am.

An adjournment was then taken until the morning of March 31, 1910, at 10.30 o'clock.

8242 ROOM 720, CUSTOM HOUSE, NEW YORK CITY,

Thursday, March 31, 1910—10.30 a. m.

The parties by their counsel appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance. On behalf of Defendants: Mr. Peter F. Dunne, Mr. N. H. Loomis.

Mr. DUNNE. If your Honor please, the Defendants now rest.

The SPECIAL EXAMINER. What is the pleasure of the complainant?

Mr. SEVERANCE. The rebuttal will begin next Tuesday morning at half past ten, if agreeable to your Honor.

The SPECIAL EXAMINER. The Defendants rest, and the Complainant will begin its rebuttal at 10.30 Tuesday morning next.

An adjournment was thereupon taken until the morning of Tuesday, April 5, 1910, at 10.30 o'clock.

8243 ROOM 720, CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, April 5, 1910—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. Peter F. Dunne and Mr. N. H. Loomis, and on behalf of the Defendant Farmers' Loan & Trust Company, Mr. Edward H. Blanc.

Mr. BLANC. It is stipulated that Robert S. Lovett, Trustee, has been substituted for Edward H. Harriman, Trustee, under Exhibit B attached to the petition herein, dated June, 7, 1903, and being Complainant's Exhibit 31 of the record in this case.

EDWIN HAWLEY,[a]

recalled as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hawley, how many years were you associated with Mr. Collis P. Huntington in business?

A. About 19 years.

Q. How close and intimate were your relations with him?

A. Quite close.

Q. As compared with his other associates in business here in New York how were they?

A. Probably to a greater extent than almost any other man.

Q. In what connection were you associated with him?

A. In various ways.

Q. Were you particularly associated with him in connection with the Southern Pacific?

A. Yes.

Q. Not only in the position that you occupied, in charge of the traffic here, but as the owner of stock in that company?

A. Yes, sir.

Q. Some time prior to the death of Mr. Huntington, did you unite with him in the purchase of certain stock of the Southern Pacific?

A. I did.

Q. I care nothing about the price that was paid, or anything of that sort, but will you state briefly how that stock happened to be purchased and the reason for its purchase, as to the control of the property, etc.?

8244 A. The purchase in which I joined Mr. Huntington was the Crocker stock—who owned at one time one-fourth of the capital of the Southern Pacific. That interest sold their stock through Speyer & Company.

[a] The testimony of Mr. Hawley was taken March 29, 1910, by consent of counsel.

Q. How did you happen to join in the purchase of the Crocker stock—at whose instance?

A. At the request of Mr. Huntington.

Q. What was the purpose that Mr. Huntington and yourself had in the purchase of that stock?

A. Only to increase our interest in the Company's affairs.

Q. Was that on the part of Mr. Huntington for the purpose of maintaining control of the company?

A. That was one of the objects, yes.

Q. How long was that before Mr. Huntington's death?

A. I could not say as to that. I am not very good on dates.

Q. It was not very long, was it?

A. No; it was a short time prior to his death.

Q. Can you remember now the amount of stock that was purchased at that time? Or don't you remember that?

A. The stock that was purchased through Speyer & Company?

Q. Yes; the purchase you made in connection with Mr. Huntington.

A. We purchased 100,000 shares jointly.

Q. How often did you see Mr. Huntington in a business way?

A. Every day, nearly.

Q. What was his habit as to talking over with you business relating to the Southern Pacific?

A. It was a habit.

Q. That was his habit?

A. Yes.

Q. And where would you meet him for that purpose—at his office, or his house, or both places?

A. Both places.

Q. As a matter of fact, your relations with him were exceedingly intimate and confidential, weren't they?

A. Quite so.

8245 Q. Did you know in those days Mr. E. H. Harriman?

A. Yes, sir.

Q. Did you see anything of Mr. Harriman in connection with Mr. Huntington a short time before Mr. Huntington's death?

A. I saw him occasionally, yes.

Q. Did you make any trips with him?

A. Yes; Mr. Huntington and Mr. Harriman and myself made a trip to the Adirondacks.

Q. How long before Mr. Huntington's death?

A. I think about three or four weeks.

Q. How long were you together at that time?

A. Only a couple of days.

Q. Previous to Mr. Huntington's death did you see Mr. Harriman frequently? Did you see him often here in New York?

A. I saw him occasionally.

Q. Nothing like as often as you did Mr. Huntington?

A. No.

Q. Mr. Kahn was testifying as a witness in this case the other day, and among other things he gave this testimony. After speaking of the fact that he thought it would have been prejudicial to the Union Pacific to have had some hostile influence come into the Southern Pacific, he said: "So much so that Mr. Harriman, in the last year or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific, to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific system.
8246 That was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific." Later on in his testimony Mr. Kahn stated that he could not say that he was present at any such interviews, but in some way they came to his knowledge. Did any such matter as that come to your knowledge?

A. No, sir.

Q. You never heard of it?

A. No. It may have taken place, however.

Q. Yes, but if so Mr. Huntington never mentioned it to you?

A. No.

Q. And you never heard of it from any source?

A. No, sir.

Q. Further on in Mr. Kahn's testimony he was interrogated with reference to the purchase of the Southern Pacific stock by the Union Pacific Company and the relation of Kuhn, Loeb & Company to the transaction. He testified as follows: "Q. Now, the first purchase of stock, $75,000,000, you say was from Kuhn, Loeb & Company. From whom did Kuhn, Loeb & Company buy this stock? A. Most of it from the Huntington estate." What, if anything, did you have to do with the sale of the Huntington stock after Mr. Huntington's death?

A. I negotiated the sale for 475,000 shares of stock.

Q. Was that all stock belonging to the Huntington estate, or were you the owner of a portion of it?

A. I was the owner of a portion of it.

Q. And did that include the entire holdings of the Huntington estate and yourself?

A. Yes, sir.

Q. To whom did you sell that stock?

A. To Mr. Harriman.

8247 Q. Where was the transaction consummated?

A. At Mr. Harriman's house.

Q. Whom did you represent in the transaction?

A. I represented the Huntington interests and myself.

Q. How long were those negotiations in progress?

A. For some little time.

Q. Were your negotiations exclusively with Mr. Harriman?
A. Yes; so far as the Union Pacific was concerned.
Q. That is what I mean; so far as the sale of the stock.
A. Yes.
Q. Now, you say the matter was finally concluded at Mr. Harriman's house. Who were present at the time you finally made your contract?
A. Mr. Harriman, Mr. Schiff, Mr. H. E. Huntington and myself.
Q. Who fixed the price at which the stock should be purchased by Mr. Harriman?
A. I fixed the price for both parties.
Q. Both for the estate and yourself?
A. Yes. The price was satisfactory to both.
Q. Mr. Kahn also testified that he was advised at that time, or after Mr. Huntington's death, that Mr. George Gould was trying to buy the control of the Southern Pacific, or at least trying to buy the Huntington stock. Did Mr. Gould attempt to buy that Huntington stock?
A. I never heard that he did.
Q. Did he ever speak to you on the subject?
A. No, sir.
Q. Did you hear at the time from any source, from the executors or anybody else, that Mr. Gould was trying to buy that stock?
Mr. DUNNE. That is objected to as incompetent.
A. Never.
Q. Who were the executors of the Huntington estate?
8248 A. Charles H. Tweed, Isaac E. Gates, and Mrs. Huntington.
Q. Mr. H. E. Huntington was not an executor?
A. No, sir.

Cross-examination by Mr. DUNNE:

Q. Mr. Hawley, were you in the employ of the Southern Pacific Company in any capacity up to the time of the death of C. P. Huntington?
A. Yes, sir.
Q. In what capacity?
A. As assistant general traffic manager.
Q. Who was your immediate superior?
A. Mr. Stubbs.
Q. When did Mr. Huntington die?
A. August, 1900.
Q. You have mentioned the executors of his will. When was the administration of his estate closed?
A. I don't know that it is closed yet.
Q. So far as you know, it is still open?
A. I think so, in some respects.
Q. At all events you feel free to say, do you not, that at the time this stock was sold the administration was not closed and the sale was made by the executors as such? Is not that so?

A. I don't know whether it was made by the executors or not. I don't think the executors had anything to do with it.

Q. Well, that is possibly a difference of words, Mr. Hawley. The property had not been distributed to the beneficiaries of the will and the executors had not been discharged from their trust at the time this stock was sold, had they?

A. I think not.

Q. When you say the executors had nothing to do with the sale of the stock, are you carrying in your mind the proposition that you were the active intermediary in the disposition of that
8249 stock to Mr. Harriman?

A. Not at all.

Q. Do you know how title could be made to that stock in a purchaser except by the action of the executors?

A. I think the stock was entirely free from the power of the executors.

Q. In what respect?

A. I think it was left by special bequest.

Q. Then, it was a part of the estate of C. P. Huntington, was it not?

A. It might be so regarded, yes.

Q. Now, Mr. Hawley, were you employed to sell that stock?

A. I was not.

Q. Were you authorized by any person to sell the stock of the C. P. Huntington estate?

A. I was authorized to sell the stock.

Q. Who authorized you to sell it?

A. Mrs. Huntington.

Q. When did Mrs. Huntington authorize you to sell that stock?

A. I could not tell you that.

Q. How long before this interview?

A. Oh, a short time prior to that.

Q. When I mention "interview," I speak of the interview at which Mr. Schiff was present. How long before that?

A. I could not say exactly.

Q. About how long?

A. Well, I was authorized to negotiate the sale for probably sixty days prior to the date that the sale was made.

Q. Then, the first authorization that you had to sell that stock was about sixty days before this final interview?

A. I think that may be so.

Q. I understand Mr. Huntington died in August, 1900.

A. Yes.

8250 Q. When did this final interview take place?

A. What interview?

Q. At which Mr. Schiff and Mr. Harriman were present.

A. I don't remember the date.

Q. It was very shortly before the sale of the stock, wasn't it?

A. The last interview was at the time of the sale, yes.

Q. Then, if the stock was sold in February, 1901, that would reasonably approximate the time of the interview, would it not?

A. The interview and the sale of the stock took place at the same time.

Q. In the sale of this stock, so far as you were a factor in the transaction, did you have any relations of any kind whatever with the board of directors of the Union Pacific Railroad Company?

A. None whatever.

Q. In the transaction of the sale of this stock, so far as you were a factor in the matter, did you have any relations or dealings whatever with the executive committee of the Union Pacific as such?

A. None whatever.

Q. At this final interview, at which you say the transaction was closed, was Mr. Jacob Schiff present?

A. He was.

Q. Was he at that time a member of the firm of Kuhn, Loeb & Company?

A. He was.

Q. Who paid you the money for that stock?

A. Kuhn, Loeb & Company paid me for my proportion of it.

Q. And who paid for the Huntington stock?

A. Kuhn, Loeb & Company, I think.

Q. Do you know anything about the issue of $40,000,000 of convertible bonds by the Union Pacific out of which funds were
8251 realised to make good to Kuhn, Loeb & Company the amounts paid by them for the stock in question?

A. I took some of the underwriting, that is all I know about it.

Q. You know, then, such bonds were issued, do you not?

A. Yes, sir.

Q. You took some of the underwriting, I apprehend. In what capacity—as a stockholder?

A. No, sir.

Q. Simply as an investor?

A. Yes, sir; as an individual.

By Mr. SEVERANCE:

Q. You stated on your direct examination that your negotiations so far the matter of the sale of the stocks was concerned, were entirely with Mr. Harriman, and you saw Mr. Schiff finally at the interview when it was closed.

A. That is all.

Q. Did Mr. Schiff take any part in the negotiations?

A. No, sir.

Q. During the course of those negotiations with Mr. Harriman for the sale of this stock, was any proposition made to you by Mr. Harriman looking to the purchase or the control simply of the Central Pacific line?

A. No, sir.

Q. There were no negotiations except for the purchase of the stock?
A. That is all.

By Mr. DUNNE:

Q. Your position in the matter, as I understand it, was that about sixty days before the stock was sold, you were authorized to sell Southern Pacific stock; isn't that the short of it, Mr. Hawley?
A. I was authorized to sell it, yes.
Q. About sixty days before it was sold?
A. I don't know; I couldn't say whether it was sixty days, or ninety days, or fifty days—along about there.
8252 Q. It was along about there?
A. Yes.

By Mr. SEVERANCE:

Q. What were your business relations with Mrs. Huntington after her husband died?
A. They were friendly.
Q. Were you advising her about her affairs, more or less?
A. More or less, yes, sir.
Q. And you put through this transaction without any compensation, as you stated to Mr. Dunne, so far as the Huntington stock was concerned? You were not employed by them, but you were selling your own stock, and you sold the stock of your deceased friend?
A. That is right.

By Mr. DUNNE:

Q. That is, I understand you to say you received no compensation from the Huntington estate.
A. I did not.

8253 GEORGE J. GOULD,

being duly sworn as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gould, where do you live?
A. Lakewood, New Jersey.
Q. What railroads are you connected with? By that I mean what roads west of the Missouri River, what are known as transcontinental lines.
A. The Missouri Pacific, the Texas & Pacific, the International Great Northern.
Q. What about the Denver & Rio Grande?
A. And the Wabash west of the River, and the Denver & Rio Grande and the Western Pacific.

Q. What position do you hold in the Denver & Rio Grande?
A. I am chairman of the board.
Q. Mr. Jeffery is the president?
A. The president, yes, sir.
Q. When did you acquire your interest in the Denver & Rio Grande, or the control of that line?
A. In the fall of 1900 and the winter of 1901.
Q. Previous to that time had Mr. Jeffery been the president?
A. He had.
Q. At the time you acquired your interest in the Denver & Rio Grande, had that company purchased the Rio Grande Western?
A. They were in negotiation for it. I am not quite sure whether the purchase had been closed before or was closed after, but I am inclined to think it was after I came into the directorate.
Q. And when did you go into the directorate?
A. February 14, 1901.
Q. Previous to that time had you been a director of the Union Pacific?
A. Yes.
8254 Q. For how long a time?
A. Since the reorganization. I don't remember the date.
Q. Continuously up to that time?
A. Yes.
Q. And for some time thereafter, were you not?
A. Yes.
Q. What were your relations with Mr. Harriman, as to being intimate or otherwise?
A. Rather intimate. We were friendly. I was on the Executive Committee of the Union Pacific.
Q. You were on that committee previous to the time you acquired the Rio Grande?
A. Yes.
Q. Do you remember of the time that the negotiations were pending on the part of Mr. Harriman for the Union Pacific for the acquisition of the stock of the Southern Pacific?
A. Yes.
Q. Were you advised of those negotiations as they were going on?
A. Yes.
Q. By whom?
A. By Mr. Harriman. Not in the detail but in the general.
Q. During the time that those negotiations were pending, or at any time after the death of Mr. Huntington, did you approach the representatives of the Huntington estate with a view to purchasing the stock of the Southern Pacific?
A. No, sir.
Q. During the time these negotiations were pending between Mr. Harriman and the Huntington people, did you have any talk with him about the possibility of taking or of endeavoring to buy that stock if he did not want it, or anything of that sort?

A. Yes. Mr. Harriman seemed at one time to get a little lukewarm about taking the stock, about making the purchase. I told him if he did not want it and had no objection, I would take it for our interests.

Q. How long was that, if you can approximate, before the
8255 time that Mr. Harriman closed the purchase?

A. I should be guessing somewhat at it, but I should imagine it was in September or October.

Q. Along in the autumn?

A. That is a vague guess, Mr. Severance.

Q. Mr. Gould, after the acquisition of the stock or the contract for its purchase, did you have any talk with Mr. Harriman with reference to sharing in the purchase?

A. Yes; I suggested to Mr. Harriman that he let the railroads with which I was connected have a half interest in the purchase—the Missouri Pacific and the Texas & Pacific. He turned the suggestion down.

Q. Declined?

A. Yes.

Q. Did he make any suggestion to you subsequent to that with reference to permitting him to have an interest in the Denver & Rio Grande purchase?

A. Yes. When I told him that I had acquired the control of the Denver & Rio Grande, he asked me for a half interest. He first said, "You bought that, I suppose, for both interests—Union Pacific and your own." I said, "No." He said, "Well, I would like to have a half interest in it." I told him I could not arrange it.

Q. It could not be arranged?

A. No.

Q. During the time these negotiations were pending, or at any time, did you know of any effort being made to buy the Central Pacific line alone?

A. No; I don't remember of it.

Q. You stated that you acquired this Denver & Rio Grande stock from December up to February.

A. I said the fall of 1900 and the winter of 1901.

8256 Q. That stock was not bought in a block, was it? It was bought in the market?

A. It was bought largely in the London market.

Q. Where did the control of that line lie before you acquired control?

A. I think it was in the hands of the public, commonly.

Q. Who was the gentleman in this country that represented it?

A. Mr. Coppell, of Maitland, Coppell & Company, was chairman of the board, and Mr. Jeffery the president.

Cross-examination by Mr. DUNNE:

Q. Mr. Gould, you have mentioned the Missouri Pacific and the Texas & Pacific as properties that you were interested in. Were you

interested in those properties in 1900, anterior to the purchase of the Southern Pacific stock?

A. I was.

Q. The Texas & Pacific runs through Texas and terminates at El Paso, does it not?

A. It does.

Q. Has it a connection with the St. Louis & Iron Mountain prolonged to the north?

A. At Texarkana, yes.

Q. Were you interested in the St. Louis & Iron Mountain?

A. Yes; that is part of the Missouri Pacific.

Q. Did the Texas & Pacific in 1900 have any outlet into California, except over the Southern Pacific rails, from El Paso?

A. None, except by the Atchison. It could send business by the Atchison, I think, up to Albuquerque.

Q. It would have to go up to Albuquerque?

A. Yes.

Q. But no direct outlet except over the Southern Pacific rails?

A. No.

8257 Q. The St. Louis & Iron Mountain, as I understand you, is part of the Missouri Pacific?

A. Yes; part of the Missouri Pacific System.

Q. The St. Louis & Iron Mountain originates in the south at Texarkana, as I understood you?

A. Yes; that is its southern terminal point, on the Texas line.

Q. Where does it terminate at the north?

A. St. Louis.

Q. Then does the Missouri Pacific strike out to the west from St. Louis?

A. Yes.

Q. How far west does it go?

A. It goes to Pueblo.

Q. Between Pueblo and Ogden, in 1900, did the Rio Grande Western and the Denver & Rio Grande make a line between those two points?

A. Yes.

Q. And I understand that in 1900 you were in negotiation for the control of the Denver & Rio Grande, and, if I understand you correctly, the Denver & Rio Grande in turn was negotiating for the annexation to its line of the Rio Grande Western?

A. I was trying to buy the control of the Denver & Rio Grande in the market; I was not negotiating with any particular person.

Q. Precisely. And the Denver & Rio Grande, as I understood you, at that time was negotiating or seeking to control or purchase an interest in the Rio Grande Western?

A. Yes.

Q. That situation as between the Denver & Rio Grande and the Rio Grande Western, if it had been brought to pass, would have unified the line between Pueblo and Ogden, would it not?

A. Yes.

Q. And if you had acquired the Denver & Rio Grande you would have accomplished an extension of the Missouri Pacific from Pueblo to Ogden?

A. Yes.

8258 Q. Did the Denver & Rio Grande have any other railroad outlet from Ogden to California except over the Southern Pacific rails?

A. None.

Q. Is it not a fact that before the Union Pacific purchased the Southern Pacific stock, before the Union Pacific had acquired that stock at all, you notified Mr. Harriman that in the event he did not proceed with those negotiations you would take that stock for your properties?

A. No; not in the way you put it; no. I suggested to Mr. Harriman—I did not notify him in the sense that you use the word, of laying the law down. I suggested to Mr. Harriman, during the negotiations, that if he did not want the properties—the Southern Pacific—I would take them for my interests.

Q. I quite understand; but I used the term "notify" simply in the lawyer's sense—that you made him aware of your willingness to take the property in the event that he did not consummate the negotiations with the Union Pacific.

A. Yes.

Q. Now, is that a correct understanding?

A. That is correct.

Q. When was that, Mr. Gould?

A. I could not place the date with any absolute degree of accuracy. I should think it was some time in September or October, 1900. It was whilst he was proceeding with his negotiations with the Huntington estate.

Q. After Mr. Harriman had accomplished the purchase of the Southern Pacific stock, did you again in any way signify to him your desire to take over any part of that stock purchase?

A. I suggested to him that I take a half interest, or, rather, my interests take a half interest.

Q. How soon, in an approximate way, was that after Mr.

8259 Harriman had made the Southern Pacific stock purchase?

A. I should think it was about that time, about the time he completed it.

Q. And, as I understand you, he declined?

A. Yes.

Q. Did you make any statement along those same lines at that time to any member of the firm of Kuhn, Loeb & Company?

A. I think I mentioned it to Mr. Schiff, probably. Yes, I think I mentioned it to Mr. Schiff.

Q. You have stated to Mr. Severance that you were friendly with Mr. Harriman at the time of these negotiations, that you were a member with him of the executive committee. Do you know whether during the pendency of his negotiations for the purchase of the stock

and before the consummation of the sale, he was apprehensive that other interests over and above your own interest were desirous of getting that stock?

A. Yes, he talked it over with me several times, and he was afraid the North-Western would build from the Black Hills. They had a line up to the Black Hills, and he was afraid the North-Western would build from the terminus of their line through to Ogden, going through a canyon that lies to the north of Ogden. Ogden Canyon, I think the name is, but I am not quite sure. Then he also used to be afraid of the Burlington building through to Ogden.

Q. Is it not a fact that in 1900, after Mr. Huntington's death, it was generally understood among railroad men of your standing and Mr. Harriman's that the Southern Pacific stock would be sold?

A. Yes; I supposed it would come on the market.

By Mr. SEVERANCE:

Q. But neither in the fall of 1900, nor at any time, did you
8260 personally attempt to buy it?

A. No. I would have considered that disloyal to my associates.

Q. Mr. Harriman?

A. Yes.

8261 GEORGE E. MILES,

being duly sworn as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Miles?

A. New York.

Q. How long have you lived in New York?

A. Nearly 11 years.

Q. Previous to that where did you live?

A. Brooklyn.

Q. For how long?

A. A great many years.

Q. Previous to the death of Mr. C. P. Huntington were you acquainted with him?

A. Yes.

Q. And did you sustain any relation to him?

A. His private secretary.

Q. For how many years?

A. About nineteen.

Q. Up to the time of his death?

A. Up to the time of his death.

Q. As private secretary what were your duties, what did you do, in a general way?

A. In a general way I attended to all the correspondence and traveled with him. I don't know that I can make it any more definite than that.

Q. How were your relations with him outside of business, as to being intimate or otherwise?

A. Quite intimate.

Q. You say you traveled with him?

A. Traveled with him.

Q. Did you go to California with him on his trips there?

A. Always.

Q. And where did you live when in California?

A. At his house. That is, after they purchased that house there. Before that, at the Palace Hotel.

Q. Where were you at the time Mr. Huntington died?

8262 A. At his camp in the Adirondacks, where he died.

Q. During those nineteen years where did you have your office, or where did Mr. Huntington have his office?

A. In the Mills Building, 23 Broad Street.

Q. And where was your office or desk with reference to his?

A. In his room.

Q. What was his habit as to talking over his business matters with you or in your presence?

A. Well, I very frequently talked with him; of course sometimes not.

Q. But your relations with Mr. Huntington were of an exceedingly intimate character, were they not?

A. Of an exceedingly intimate character.

Q. And continued to be up to the time he died?

A. Up to the time he died.

Q. Did Mr. E. H. Harriman ever come to Mr. Huntington's office?

A. Occasionally, yes.

Q. Frequently, or otherwise?

A. Very rarely.

Q. Did he make long stays or short stops?

A. Very short stops.

Q. When he came to his office, you saw him there yourself when you were in the office?

A. I saw him there, yes.

Q. Infrequently, you say?

A. Infrequently, yes.

Q. On those visits did Mr. Harriman sit down and discuss matters privately with Mr. Huntington?

A. Generally not. I don't recall ever seeing him have a long conversation with Mr. Huntington.

Q. Mr. Kahn was on the stand the other day as a witness for the defendants, and in the course of his testimony he stated that it was considered it would have been prejudicial to the Union Pacific

8263 to have had some hostile influence come into the Union Pacific, and then he proceeded (I am quoting his testimony): "So

much so that Mr. Harriman, in the last year or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific, to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific System. That was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific." Did any such negotiations ever come to your attention?

A. No.

Q. You never heard of them?

A. I never heard of them, no.

Q. Did Mr. Huntington ever say to you that he had been approached on that subject by Mr. Harriman?

Mr. DUNNE. That is objected to as incompetent.

A. No, he never said so to me.

Q. He never did?

A. He never said so to me, no.

Q. You have already said it never came to your attention from any source?

A. It never came to my attention, no.

Cross-examination by Mr. DUNNE:

Q. Mr. Miles, I would like to read Mr. Kahn's testimony to you once more. "So much so that Mr. Harriman, in the last year
8264 or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific, to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific System. This was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific." Calling your attention to that testimony, isn't it entirely possible, so far as you are concerned, that just precisely that situation may have existed between Mr. Harriman and Mr. Huntington?

A. It is possible.

Q. The truth of it is, you don't appear to know anything at all about that stock purchase, do you?

Mr. SEVERANCE. I haven't asked him anything about it.

A. The stock purchase, you are talking about?

Q. Yes.

A. After Mr. Huntington's death?

Q. Yes.

A. I wasn't connected with the estate in any capacity at all.

Mr. SEVERANCE. I didn't ask him about that.

By Mr. SEVERANCE:

Q. Mr. Miles, if you are not really delicate about it, I would like to ask you your age.

A. I will be sixty very soon.

Mr. DUNNE. I won't cross-examine you any further on that delicate subject, Mr. Miles.

WITNESS. It doesn't affect me.

8265 FRANK W. WHITE (3)

being recalled as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. White, you have been sworn before in this case, and there was introduced, as part of your examination, Complainant's Exhibit 84, showing certain rates by the water-and-rail lines and by the all-rail lines to California from New York pier. Mr. Spence has prepared a table, which he has introduced, and which showed in February, 1910, some 77 items upon which there is a differential. Have you checked that?

A. Yes, sir.

Q. Are Mr. Spence's figures correct?

A. Yes, sir.

Q. Have you also made a supplemental list of the items appearing in Complainant's Exhibit 84?

A. Yes, sir.

Q. Showing all of the differentials as they existed January 1, 1909?

A. Yes, sir.

Q. I show you Complainant's Exhibit 212. Is that the table?

A. Yes, sir.

Q. And does that correctly set forth what it purports to set forth, namely, the rates water-and-rail, and the rates all-rail?

A. Yes, sir.

Q. From New York pier only?

A. No, it sets forth the rates from the Morgan Line pier, and also all-rail from New York City.

Q. But that differential does not exist as between commodities transported from interior points in the seaboard zone? That is, those are simply from New York City proper?

A. Yes, sir.

8266 Q. These differential rates, where they exist, apply only from New York City proper and not from points in the seaboard

zone, from which points the rail or water haul to New York is absorbed by the Morgan Line?

A. Yes, sir.

Q. That is correct, is it?

A. That is correct.

Q. Only from New York City.

A. Only from the Morgan Line or Mallory Line pier.

Q. On page 887 of the printed record, when you were being examined the first time you were on the stand, you were asked, "Now, since 1901, as shown by Exhibit 84, how many of those items have been changed until they are now the same?" And you answered, "There are about twenty left in which the rates for the Morgan Line are lower than they are for the all-rail line." I understand that you misunderstood that question and desire to correct your answer.

A. Yes, sir.

Q. Will you state what you understood you were asked and what you intended to state?

A. I understood it to mean that there was an advance of rates on January 1, 1909, and I understood it to mean how many of the rates had not been advanced—in other words, remained the same as they were before.

Q. Well, how many were there that were not advanced?

A. Twenty.

Q. Twenty or nineteen?

A. Nineteen.

Q. Your answer here was "about twenty."

A. Yes.

Q. That is what you supposed you testified about, or, rather intended to testify about?

A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 212 in evidence.

Complainant's Exhibit 212 (White) is as follows:

COMPLAINANT'S EXHIBIT 212.

(White.)

INTERSTATE COMMERCE COMMISSION.

Bureau of Tariffs, March 26, 1910.

Statement Showing Differential Rates in Cents per 100 lbs., unless otherwise specified, in effect Dec. 1, 1908, and Jan. 1, 1909, on Traffic from New York, N. Y., via all rail, and from Morgan Line Pier, via Morgan Line, to San Francisco, California.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Agricultural implements N. O. S., viz.: Harrow Teeth, min. C. L. wt. 30,000 lbs	125	75	135	85				
Ammonia, Sulphate of, in packages, min. C. L. wt. 40,000 lbs.						60		
Asphaltum, in packages, min. C. L. wt. 60,000 lbs.		50				50		
Automobiles, passenger and freight					600		700	
Bananas, prepaid or guaranteed, charges to be computed on basis of railroad weight as ascertained at point of shipment, min. C. L. wt. 20,000 lbs.						125		
Barytes, min. C. L. wt. 60,000 lbs.	125	50			125	50		
Beans and Peas, dried, split, or whole, in sacks or bbls. min. C. L. wt. 40,000 lbs.	125	75	135	85				
Bones, min. C. L. wt. 30,000 lbs.						65		
Bottles, wine or beer, and whiskey or brandy bottles of similar shapes, common flint, green, black or amber (not including druggists prescription bottles of similar shape, or flasks, any style finish); in bulk or in boxes, casks, or crates, min. C. L. wt. 30,000 lbs.						75		80
Brass Goods: Not silver-plated, viz.:								
Brass ingots	180	120	185	125				
Plate and Sheet, completely boxed		115		125				
Rods (including Iron Rods, brass-covered), completely boxed		115		125				
Brick (clay products), as follows: Fire brick or fire brick and fire tile of various shapes and fire clay in straight or mixed carloads (but not including tank blocks or retort settings), min. wt. 40,000 lbs.						50		
Common or pressed, boxed or crated, ornamental figured, boxed or crated, shaped, boxed or crated, invoice value not exceeding $5.00 per ton, min. C. L. cwt. 50,000 lbs		50		75	100			
Fire brick (of common brick shape), and fire clay, boxed or crated in min. 40,000 lbs.		50		75	100			

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Brick (clay products), as follows—Continued.								
Fire brick (of irregular shape), retort settings (including tank blocks for glass furnaces), and fire clay linings for grates, stoves or furnaces, N. O. S., boxed or crated					150			
Calcium, chloride of, in iron drums, min. C. L. wt. 40,000 lbs.		50						
Canned Goods, viz:								
a Fish, Fruits (not preserves), Meats (including potted or deviled), vegetables, baked macaroni and cheese, soups, breads and puddings, in hermetically sealed cans, boxed, min. C. L. wt. 40,000 lbs.	145	95	150	100		95		100
a Canned Corn, boxed, straight C. L. min. wt. 40,000 lbs.		90		95		90		95
a Canned Fish, canned clam juice and canned clam chowder, boxed, min. C. L. wt. 40,000 lbs.		90		95		90		95
Canned meats or meats in glass, hermetically sealed (including potted or deviled), boxed, straight or mixed, C. L., min. wt. 40,000 lbs.		90		95		90		95
a Canned beans and canned peas, boxed, min. C. L. wt. 40,000 lbs.		90		95		90		95
Carbon clinker, in packages, min. C. L. wt. 40,000 lbs.		77						
Cement, in packages, min. C. L. wt. 40,000 lbs.		45						
Cement, Building or Paving, N. O. S. in packages, min. wt. 40,000 lbs.	100	75	105	80	100	50		
Cement (Tar), Building or Paving, in packages, min. C. L. wt. 60,000 lbs.	100	50	125	75	100	60		
Cement Work for building purposes (not including statuary or figures), O. R. B.		75		80				
Same, boxed or crated	100		105					
Cereals and Cereal Preparations, viz.:								
Barley Malt, in packages, min. C. L. wt. 30,000 lbs.	115	65						
Brewers Grain or Refuse, Dry in packages, min. wt. C. L. 30,000 lbs	130	85						
Pop Corn, in packages, min. C. L. wt. 30,000 lbs	150	100						
Brewers Grits, Brewers Meal, Corn Meal, Corn Chop or chop feed, chop corn, cracked corn and hominy, straight carloads (excepting to Rule 15), min. C. L. wt. 50,000 lbs. unless capacity of car is less than 50,000 lbs. in which case min. C. L. wt. will be capacity of car.						70		* 80
Composition for Roofing, min. C. L. wt. 40,000 lbs.		75		85				
Conduits, underground, for electric wires, stone, clay or cement, min. C. L. wt. 30,000 lbs.		75		80		75		80

a Min. wt. previous to Jan. 1st, 30,000 lbs. via Morgan Line.

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Conduits, underground, for electric wires, stone, clay or cement, in packages	125	.....	130	.....	125	.....	130	.....
Creosote Oil or Tar Oil, in barrels or in tin cans, boxed, min. C. L. wt. 30,000	.....	.....	.....	.....	.....	55	.....	.....
Copper Goods, not silver-plated, viz.:								
Plate and Sheet N. O. S. completely boxed (min. C. L. wt. 30,000)	.....	115	.....	125	.....	.....	.....	.....
Rods completely boxed (lbs.)	.....	115	.....	125	.....	.....	.....	.....
Copper, sulphate of (bluestone), min. C. L. wt. 40,000 lbs	.....	60	.....	.....	.....	.....	.....	.....
Drums, iron, empty, returned, min. C. L. wt. 20,000 lbs	.....	.....	.....	.....	150	50	.....	.....
Ferro Manganese, in pigs, or ground (in casks) min. C. L. wt. 60,000 lbs	.....	50	.....	75	.....	.....	.....	.....
Fertilizer, N. O. S., including dried blood, tankage and phosphate rock, min. C. L. wt. 40,000 lbs	.....	60	.....	.....	.....	60	.....	.....
Food, poultry, viz.: Ground meat and bone, alfalfa meal, blood meal, clover meal, gluten meal, cut alfalfa, cut clover, grain screenings, millet seed, crushed shells and charcoal, in packages, min. C. L. wt. 30,000 lbs	110	60	.....	.....	125	60	.....	.....
Furniture, O. R. B. and chafing, viz.: Sideboards, buffets, combination buffets, and sideboards, and chiffoniers, net cost of each piece not to exceed $16.00 and so receipted for, min. C. L. wt. 16,000 lbs	.....	160	.....	175	.....	.....	.....	.....
Gas Liquor or concentrated Ammoniacal Liquor, in iron drums, or in tank cars, min. C. L. wt. 50,000 lbs	.....	.....	.....	.....	.....	50	.....	.....
Glucose, in barrels O R L, Rel. min. wt. 30,000 lbs	.....	75	.....	85	.....	.....	.....	.....
Grape Sugar, O R L, Rel. min. C. L. wt. 30,000 lbs	.....	75	.....	85	.....	.....	.....	.....
Grind Stones, mounted or unmounted, O R B, min. C. L. wt. 30,000 lbs	.....	75	.....	100	.....	.....	.....	.....
Grind Stones, unmounted, O R B	125	.....	150	.....	.....	.....	.....	.....
Hemp, Sisal, Istle or Ixtle in bales, min. C. L. wt. 24,000 lbs	.....	60	.....	75	.....	60	.....	75
Iron and Steel, Articles of, viz.:								
Billets, Blooms, ingots muck bar and scrap steel, min. C. L. wt. 60,000 lbs	100	50	125	75	100	60	.....	.....
Pig, min. C. L. wt. 60,000 lbs	100	50	125	75	100	50	.....	.....
Pipe fittings and connections, including cleanout fittings, cocks or valves, wrought, cast or malleable, or iron body cocks, valves and pipe connections (the bodies or principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also wrought iron pipe bends, with or without wrought or cast iron flanges	.....	.....	.....	.....	.....	85	.....	100
Tank or reservoir material, viz.:								
Beams, columns and circular frames for top, min. C. L. wt. 30,000 lbs	.....	75	.....	.....	.....	.....	.....	.....

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Iron and Steel, Articles of, viz.—Continued.								
Ties, baling, min. C. L. wt. 40,000 lbs.		65		80				
Washers, straight C. L. min. C. L. wt. 30,000 lbs.		65		80				
Lime (including hydrated lime) in barrels, boxes, bags, min. C. L. wt. 40,000 lbs.						50		
Limestone and whiting, ground or lump in packages, min. C. L. wt. 60,000 lbs.		50				50		
Lumber, N. O. S. (including built-up, combined or veneered wood), except woods of value, min. C. L. wt. 40,000 lbs.						75		85
Mattresses and frames metallic, wire cots, wooden folding cribs with woven wire bottoms (K D) or folded flat, wire and spring beds and bottoms, and canvas cots, not upholstered, in packages.	160							
Mince Meat and Pie preparations, in pails or tubs when packed in boxes or barrels; in kets or kegs; in glass or paper boxes, boxed; in bulk, in barrels or half barrels, min. C. L. wt. 30,000 lbs.	140	90	145	95				
Mineral Water Bottles in original packages, empty second hand, returned, min. C. L. wt. 24,000 lbs.						75		
Nails and Spikes (not including railroad spikes or ship and boat spikes), cut or wire N. O. S. in boxes or kegs; wire (fence), iron or steel; smooth annealed, plain or galvanized; barbed, galvanized or painted; staples; wire hoops, straight or mixed C. L. min. wt. 40,000 lbs.		65		80		70		85
Nails and spikes (not including railroad spikes) cut or wire, N. O. S. in boxes or kegs.	110		125					
Nails, Cement-coated, in boxes or kegs, min. C. L. wt. 40,000 lbs.	110	65	125	80		70		85
Plaster Land and Adamantine, min. wt. 40,000 lbs.		70		75				
Plaster Land and Adamantine, in packages.	120		125					
Pulp, wood, in packages.	115	65	125	75				
Oil cake and oil cake meal, min. C. L. wt. 40,000 lbs.						60		
Onions, in packages, min. C. L. wt. 30,000 lbs.						90		
Ore, iron, ground, min. C. L. wt. 60,000 lbs.		a 60				a 60		
Pipe, Sewer (clay) and drain tile						65		
Pipe, Sewer (clay) and drain tile, boxed or crated.					100			
Plaster, Building, N. O. S. in packages, min. C. L. wt. 60,000 lbs.						30		
Rags, including carpet moll sweepings, in packages, min. C. L. wt. 40,000 lbs.						60		
Cars, narrow gauge or parts thereof, K. S. min. C. L. wt. 30,000 lbs.						150		
Railway Supplies, viz: Brake Shoes, min. C. L. wt. 50,000 lbs.						65		
Car wheels and axles, min. C. L. wt. 40,000 lbs.	110	60	125	75	115	65		

a Rate in cents per ton of 2,240 lbs.

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Railway Supplies, viz—Cont'd. Rails (including mining rails and saw mill track) and ties, iron or steel, including fastenings, viz: splices, railroad spikes, tie plates, track braces and track bolts, min. wt. 60,000 lbs.	110	65	.....	.....	125	.....	.....	.....
Resin, in barrels, min. C. L. wt. 40,000 lbs.	.....	50	.....	75	100	55	.....	.....
Rice, broken rice and brewers' rice, in packages, straight carloads, min. C. L. wt. 40,000 lbs.	110	60	120	75	110	65	.....	.....
Rice Flour, min. C. L. wt. 40,000 lbs.	.....	70	.....	80	.....	75	.....	.....
Rice polish (rice dust), rice bran or rice hulls, in packages, straight or mixed, C. L. min. wt. 40,000 lbs.	110	60	120	75	110	65	.....	.....
Salt, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	60	.....	.....
Salt, in packages.	.....	.....	.....	.....	100	.....	.....	.....
Sand Molding, in packages, min. C. L. wt. 60,000 lbs.	.....	50	.....	.....	.....	.....	.....	.....
Sand, sand facing, flint sand and fire sand, min. C. L. wt. 60,000 lbs.	.....	.....	.....	.....	100	50	.....	.....
Sash weights and balance weights for folding beds and lounges; also counter weights, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	100	50	.....	.....
Seed: Alfalfa, beet, clover, grass, hemp, mustard, rape, bird, timothy, millet and canary; kaffir corn seed, broom corn seed, also wheat, corn, popcorn, oats, peas and beans	.....	.....	.....	.....	145	120	150	125
Seed, flax, garden, sunflower and sorghum, min. C. L. wt. 30,000 lbs.	.....	.....	.....	.....	.....	.....	.....	.....
Seed flax, whole or ground, in packages, min. C. L. wt. 30,000 lbs.	145	120	150	125	145	120	150	125
Sheep Dip Liquid, min. C. L. wt. 30,000 lbs.	.....	60	.....	85	.....	65	.....	.....
Shingle Bands, iron or wire, in boxes or barrels, min. C. L. wt. 40,000 lbs.	.....	65	.....	80	.....	.....	.....	.....
Pitch and Tar, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	100	55	.....	.....
Silica (pulverized), or Silex, in packages, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	.....	.....	.....	.....
Soda Ash (may be shipped in sacks), soda crystals, caustic soda and hypo-sulphite nitrate (may be shipped in sacks), silicate (may be shipped in sacks), and sulphate of soda and chloride of lime, in kegs, boxes or iron drums, min. C. L. wt. 40,000 lbs.	.....	50	.....	75	110	55	.....	.....
Stone, rough, sawed or cut to dimension, not polished, min. C. L. wt. 20,000 lbs.	.....	60	.....	.....	.....	55	.....	.....
Stoves (cast iron), cooking, Heating (including stoves with cast iron tops and bottoms, or cast iron tops, bottoms and linings); or cast iron ends and linings; Laundry stoves; cast iron or steel ranges (with or without gas stove attachments); farmer's combination stoves with caldrons for same, min. C. L. wt. 30,000 lbs.	.....	125	.....	135	.....	.....	.....	.....

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity.	December 1, 1908.				January 1, 1909.			
	Morgan Line.		All Rail.		Morgan Line.		All Rail.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Strawboard, N. O. S., in crates or bundles, min. C. L. wt. 50,000 lbs.	.....	50	.....	.....	.....	55	.....	.....
Syrup (corn, glucose, maple, and rock candy) and molasses, O. R. L., min. 30,000 lbs.	.....	75	.....	90	.....	.....	.....	.....
Terra Cotta, Building, min. C. L. wt. 30,000 lbs.	.....	75	.....	80	.....	75	.....	80
Terra Cotta, Building, boxed or crated	100	.....	105	.....	.....	.....	.....	.....
Tile, Roofing, min. C. L. wt. 30,000 lbs.	.....	70	.....	80	.....	70	.....	80
Wire (fence) barbed, including staples, steel stay guards and stretchers, min. C. L. wt. 40,000 lbs.	110	65	125	80	.....	70	.....	85
Wire, iron, plain, galvanized, tinned or coppered (including if desired, steel stay guards), min. C. L. wt. 40,000 lbs.	110	65	125	80	.....	70	.....	85
Rails (steel), including mining rails, cross ties (steel) and saw mill track, min. C. L. wt. 60,000 lbs.	110	a$10.00	125	80	.....	a$11.00	.....	.....
Rail fastenings, viz.: Splices, steel clips or cross tie fastenings, railroad spikes, tie plates, track braces, track bolts and nuts and nutlocks, min. C. L. wt. 60,000 lbs.	110	b$10.00	125	80	.....	b$11.00	.....	.....
Tin and terne plate (flat as from the mill, not further manufactured), in boxes, min. C. L. wt. 40,000 lbs.	.....	55	.....	.....	.....	55	.....	.....

a Rate in cents per ton of 2,240 lbs.
b Rate in cents per ton of 2,000 lbs.

Authorities R. H. Countiss, I. C. C. 375-805-815.

8267 Cross-examination by Mr. DUNNE:

Q. Mr. White, I call your attention to the following testimony which you gave, page 887 of the printed record, referring to Complainant's Exhibit 84 and again to Complainant's Exhibit 83. "Q. I show you Complainant's Exhibit 84, in three sheets. What does that show? A. That continues it down to the present time, showing the changes in effect on January 1, 1909. Q. That is, it continues Complainant's Exhibit 83 down to the present time, showing the changes made by the tariff which took effect January 1, 1909? A. Yes, sir. Q. How many items of commodities are there in this Exhibit 83, the rates on which on January 18, 1900, were less by the Mallory Line and the Morgan Line to New Orleans and Galveston and from those places by rail to the California terminals than by the all-rail lines? A. Approximately 65 up till 1901. Q. Now, since 1901, as shown by Exhibit 84, how many of those items have been changed until they are now the same? A. There are about twenty left in which the rates for the Morgan Line are lower than they are for the all-rail line."

Mr. SEVERANCE. That is the question I asked him about.

Q. Do you recollect giving that testimony?
A. Yes, sir, I do.
Q. Do you mean to convey the impression that during any single year between 1901 or 1900 and 1909 there were only twenty commodity rates by the broken service ship-and-rail that were less than by the all-rail lines?
A. Not at all, no, sir. I just corrected my testimony now to that effect.

8268 Q. Does it not appear from your own exhibit, 83, that from January, 1900, to and including May 16, 1908, year by year, the commodity rates by the Morgan Line, which were lower than the all-rail lines, varied from 63 or 64 down to 98, never being less than 63? Does not that appear from your own exhibit?
A. I couldn't tell without I count them up, no, sir.
Q. Isn't it a fact also, or are you aware of the fact that in preparing your exhibit 83 you duplicated various items, and that, for instance, in the month of May, 1908, your exhibit shows 98 items, when in point of fact, duplication being canceled, there were only 79 items? Are you aware of the fact that your statement contains a number of errors of that kind?
A. No, sir.

8269 WILBUR H. PETER,

being duly sworn as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Peter, where do you live?
A. Washington, D. C.
Q. What is your business?
A. I am employed by the Interstate Commerce Commission.
Q. In what capacity?
A. As junior clerk.
Q. In which department?
A. In the Bureau of Statistics and Accounts.
Q. Who is the head of that bureau?
A. Prof. Henry C. Adams.
Q. Have you been at work for a short time or several weeks preparing certain figures from the reports of different railroad companies, at my request?
A. I have.
Q. I show you Complainant's Exhibit 213, which is certified as correct by the Secretary of the Commission, under its seal, and I will ask you whether you prepared the figures contained in that exhibit?
A. The actual preparation of these figures was made by a fellow clerk.
Q. Under your direction?

A. Not directly, but indirectly. Mr. Burleigh had the statement prepared by Mr. Morrow.

Q. He is right in there with you, isn't he?

A. Yes, sir.

Q. From what sources was that information secured—from the annual reports?

A. From the annual reports of the carriers named, for the years involved.

Q. Those reports disclose the items, do they? Those are among the items disclosed by annual reports?

A. Yes, sir.

8270 Q. Those are the reports that are made pursuant to law?

A. Yes, sir.

Q. Filed with the Commission?

A. Yes, sir.

Q. This statement, Defendants' Exhibit 213, is headed, "Statement compiled from the annual reports of the Oregon Railroad & Navigation Company to the Interstate Commerce Commission for the years ending June 30, 1905 to 1896, showing Miscellaneous Income from Ocean and River Steamers." That means, doesn't it, that it begins in 1896 and comes down to 1905? the heading is backwards?

A. Yes, sir.

Q. Why was not that report continued for subsequent years, since 1905?

A. My understanding is that the properties in question were no longer directly owned by the Oregon Railroad & Navigation Company.

Q. Directly operated, you mean?

A. Directly operated.

Q. That the San Francisco & Portland Steamship Company took over the line between San Francisco and Portland?

A. That is my understanding.

Q. And you have no reports of the Commission for that line?

A. No, sir.

Q. And that is the reason this exhibit stops at 1905?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 213.

Mr. DUNNE. We object to it as incompetent.

Complainant's Exhibit 213 (Peter) is as follows:

8271

COMPLAINANT'S EXHIBIT 213.

(Peter.)

INTERSTATE COMMERCE COMMISSION.

Washington.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of data in the original annual reports for the carrier named now on file with this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this Thirtieth day of March, 1910.

(Sgd.) EDW. A. MOSELEY,
Secretary.

(Seal Interstate Commerce Commission. 1887.)

8272 ***Statement compiled from the annual reports of the Oregon Railroad & Navigation Company to the Interstate Commerce Commission for the years ending June 30, 1905 to 1896, showing Miscellaneous Income from Ocean and River Steamers.***

Year.	Gross Income.	Less Expenses.	Net Miscellaneous Income.
1905	$568,103.19	$583,667.74	[a] $15,564.55
1904	1,014,352.44	1,069,485.01	[a] 55,132.57
1903	858,940.43	936,882.02	[a] 77,941.59
1902	860,650.20	909,763.83	[a] 49,113.63
1901	849,346.53	835,294.08	14,052.45
1900	839,277.80	795,530.23	43,747.57
1899	747,697.32	742,080.48	5,616.84
1898	902,922.35	766,542.23	136,380.12
1897[b]	463,808.55	456,241.86	7,566.69
1896[c]	576,164.00	775,216.79	[a] 199,052.79

[a] Deficit.

[b] Figures shown are from the report of the Oregon Railroad & Navigation Company for the period August 18, 1896, to June 30, 1897. The report of E. McNeill, Receiver, Oregon Railway & Navigation Company for the period July 1, 1896, to August 17, 1896, shows additional net miscellaneous income of $6,624.10 from Ocean and River Lines.

[c] Figures from the report of E. McNeill, Receiver, Oregon Railway & Navigation Company.

8273 Q. I show you Complainant's Exhibit 214, and will ask you whether you had charge of the preparation of that exhibit.

A. I did.

Q. Was it made up by you?

A. Under my direction, yes, sir, direct.

Q. From what sources was the information procured that appears upon this exhibit?

A. From the annual reports filed with the Commission by the carriers named.

Q. I notice you have a grand recapitulation on the first page of this exhibit; then there is a recapitulation and detail of each exhibit attached. That is correct, isn't it?

A. That is correct.

Q. Now, take the Union Pacific, for instance. You have the Union Pacific Railroad Company, then various other companies, such as the Leavenworth, Kansas & Western, the Oregon Short Line, the Oregon Railroad & Navigation Company, the Oregon & Washington, etc. Why is it that you have those in detail? Are those reports filed separately with the Commission?

A. They are.

Q. And you have put them all together, have you, on this exhibit—the earnings and tonnage, and arrived at the result shown?

A. Yes.

Q. By systems?

A. By systems, yes.

Q. Now, you did that with the Union Pacific. Did you also with the Southern Pacific, the Northern Pacific, the Atchison, the Great Northern, the Denver & Rio Grande, and the Canadian Pacific?

A. Yes, sir.

Q. You told me yesterday, I believe, that with reference to the Canadian Pacific there were certain explanations which
8274 should be made.

A. The data here assembled represent the information as taken from the reports filed for the roads named only, and do not cover any lines that may be operated within the boundary of the Dominion of Canada for which no reports are sent to the Interstate Commerce Commission of the United States.

Q. But the other systems, Union Pacific, Southern Pacific, Northern Pacific, Atchison, Great Northern, and Denver & Rio Grande disclose a complete showing, do they, of the operated lines of these various systems?

A. No, I think perhaps the Northern Pacific and the Southern Pacific may own lines outside of the United States, but the figures here assembled cover the operations as reported.

Q. Then, in each case they show everything that has been reported?

A. The statements show everything, yes.

Q. And disclose all the business done in the United States?

A. Yes, sir.

Q. Have you a copy of this statement in front of you?

A. Yes.

Q. The years that are mentioned here, are those fiscal years ending June 30th?

A. Yes, sir.

Q. The first fiscal year of the Union Pacific after the acquisition of the Southern Pacific stock, which was in the spring of 1901—the first complete fiscal year after the amalgamation was the one headed 1902. That would be beginning July 1, 1901, and ending June 30th, 1902?

A. Yes.

Q. I notice from this statement that the rate per ton per mile on the Union Pacific has gone up from 1902 to 1909 from 0.981 of a cent to 1.026. That is correct, isn't it?

A. Yes, sir.

8275 Q. Those computations were made by you, were they, as shown by these various years?

A. They were made by clerks in my office, and verified by myself.

Q. And the Southern Pacific for the same time has gone up from 0.881 of a cent to 1.165?

A. Yes, sir.

Q. As shown?

A. Yes.

Mr. SEVERANCE. I will offer in evidence Complainant's Exhibit 214, Certificate of the Secretary of the Interstate Commerce Commission, including the details attached to the recapitulation, said exhibit consisting of 22 pages.

Complainant's Exhibit 214 (Peter) is as follows:

COMPLAINANT'S EXHIBIT 214.

(Peter.)

INTERSTATE COMMERCE COMMISSION.

(Washington.)

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of data in the original annual reports of the carriers severally named, now on file with this Commission, or represent totals, averages, etc., based on those reports.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this Thirtieth day of March, 1910.

(Sgd) EDW. A. MOSELEY,
Secretary.

(Seal Interstate Commerce Commission, 1887.)

GRAND RECAPITULATION

Of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

	1909.[1]	1908.[1]	1907.	1906.	1905.	1904.	1903.	1902.	1901.	1900.
Tons carried 1 mile:										
Union Pacific System	5,269,300,919	5,283,588,501	5,716,164,283	5,371,197,665	4,831,616,972	4,067,389,840	3,761,883,684	3,480,941,108	3,049,759,795	2,669,593,866
Southern Pacific System	6,074,037,535	6,489,812,450	6,933,232,810	6,260,937,730	5,575,108,140	6,492,610,088	6,243,959,949	5,985,727,064	5,625,338,911	4,871,542,072
Northern Pacific System	5,296,712,596	5,204,822,046	5,567,901,445	5,316,469,690	4,430,040,374	3,771,754,419	3,927,429,955	3,403,576,399	2,520,502,263	2,387,789,327
Atchison, Topeka & Santa Fe System	6,265,544,554	6,515,982,300	6,800,460,705	5,908,656,205	4,789,538,106	4,753,435,306	4,783,385,036	4,291,289,273	3,904,132,156	3,476,426,359
Great Northern System	4,845,068,425	5,165,817,700	5,410,791,059	4,968,493,899	4,198,869,670	3,376,876,341	3,630,949,838	3,214,482,163	2,499,752,598	2,521,521,010
Denver & Rio Grande System	1,174,311,158	1,096,283,904	1,141,943,238	1,090,046,302	901,621,028	862,060,140	1,000,728,608	998,010,972	641,959,191	571,209,599
Canadian Pacific System	8,384,285,948	6,913,959,864	7,446,796,218	6,758,158,148	5,308,693,762	4,713,813,843	4,795,355,112	4,074,323,688	3,102,591,128	3,494,916,445
Freight revenue:										
Union Pacific System	$54,074,136.18	$53,141,065.26	$55,132,250.90	$49,423,460.14	$43,183,435.72	$39,728,202.85	$36,496,007.22	$34,131,538.02	$31,641,173.66	$28,053,671.77
Southern Pacific System	70,764,595.88	71,822,006.67	77,405,042.47	65,164,821.08	58,767,828.98	56,652,913.79	54,207,702.57	52,747,345.68	49,988,895.14	41,997,305.70
Northern Pacific System	47,539,098.54	46,920,738.64	48,503,209.44	44,266,366.22	37,048,260.27	33,179,465.03	33,730,703.68	30,480,910.80	23,740,606.97	23,445,590.70
Atchison, Topeka & Santa Fe System	64,393,597.64	62,047,668.12	65,810,969.36	56,635,752.52	49,120,700.79	49,611,813.19	46,372,580.61	43,287,148.31	39,602,527.04	34,210,667.88
Great Northern System	39,525,538.14	40,357,515.67	42,133,063.33	39,731,035.53	33,566,876.33	30,384,088.88	31,387,266.89	27,997,247.24	22,032,331.14	23,006,192.62
Denver & Rio Grande System	15,753,654.01	15,009,537.13	15,690,954.96	14,388,232.36	12,284,161.98	11,731,104.44	12,692,877.25	12,150,028.12	8,488,442.64	7,651,643.23
Canadian Pacific System	63,841,746.54	53,483,314.81	58,686,873.38	51,132,256.33	40,872,783.32	36,528,004.01	36,186,118.47	31,170,855.54	24,576,136.01	25,965,711.39
Average receipts per ton per mile (cents):										
Union Pacific System	1.026	1.006	0.964	0.920	0.894	0.977	0.970	0.981	1.037	1.051
Southern Pacific System	1.165	1.107	1.116	1.041	1.054	0.873	0.868	0.881	0.889	0.862
Northern Pacific System	0.898	0.901	0.871	0.833	0.836	0.880	0.859	0.896	0.942	0.982
Atchison, Topeka & Santa Fe System	1.028	0.952	0.968	0.959	1.026	1.044	0.969	1.009	1.014	0.984
Great Northern System	0.816	0.781	0.779	0.800	0.799	0.900	0.864	0.871	0.881	0.912
Denver & Rio Grande System	1.342	1.369	1.374	1.320	1.362	1.361	1.268	1.217	1.322	1.340
Canadian Pacific System	0.761	0.774	0.788	0.757	0.770	0.775	0.755	0.765	0.792	0.743

[1] The classification of operating revenues became effective July 1, 1907.

UNION PACIFIC SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30.	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	5,269,300,919	[1] $54,074,136.18	1.026
1908	5,283,588,501	[1] 53,141,065.26	1.006
1907	5,716,164,283	55,132,250.90	0.964
1906	5,371,197,665	49,423,460.14	0.920
1905	4,831,616,972	43,183,435.72	0.894
1904	4,067,389,840	39,728,202.85	0.977
1903	3,761,883,684	36,496,007.22	0.970
1902	3,480,941,108	34,131,538.02	0.981
1901	3,049,759,795	31,641,173.66	1.037
1900	2,669,593,866	28,053,671.77	1.051

[1] The classification of operating revenues became effective July 1, 1907.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Union Pacific R. R.	3,282,693,220	$32,960,699.52	3,292,853,496	$31,664,925.44	3,446,855,577	$33,050,596.25	3,196,116,705	$29,517,907.11
Leavenworth, Kansas & Western Ry			[2] 11,163,133	[2] 235,166.32	11,643,707	252,716.28	14,223,805	255,758.28
Hwaco R. R.	251,756	22,120.53	485,555	20,686.62	[3] 459,041	[3] 20,232.21		
Oregon Short Line R. R.	1,324,584,019	12,591,282.05	1,221,707,087	11,403,599.85	1,498,521,018	12,853,101.26	1,411,446,728	10,827,398.10
Oregon R. R. & Navigation Co.	659,380,815	8,448,215.89	757,379,030	9,816,687.63	758,684,945	8,946,604.90	723,677,155	8,178,196.25
Oregon & Washington R. R.	[4] 369,546	[4] 11,728.82						
Oregon, Washington & Idaho R. R.	2,021,563	40,091.37						
Columbia Southern Ry.								
Malad Valley R. R.							2,330,592	116,531.67
Minidoka & Southwestern R. R.							1,003,743	30,200.62
Columbia River & Oregon Central R. R.							[6] 2,379,539	[6] 107,002.01
St. Anthony R. R.							1,269,197	59,155.29
Salmon River R. R.							3,437,551	138,492.01
Wyoming Western R. R.							3,408,174	64,826.07
Yellowstone Park R. R.							11,898,957	127,433.61
							[5] 5,519	[5] 559.12
Total	5,269,300,919	$54,074,136.18	5,283,588,501	$53,141,065.26	5,716,164,283	$55,132,250.90	5,371,197,665	$49,423,460.14

UNION PACIFIC SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Union Pacific R. R	2,867,865,458	$25,736,780.06	2,470,149,149	$24,267,848.74	2,098,000,534	$20,418,414.92	1,986,585,362	$19,452,978.42
Leavenworth, Kansas & Western Ry	10,359,201	221,178.22	14,120,042	276,959.96	11,398,389	234,328.36	6,131,165	148,756.37
Oregon Short Line R. R	1,313,369,005	9,720,977.98	1,074,178,960	8,637,190.77	1,125,680,886	9,105,749.55	1,022,203,966	8,306,409.56
Malad Valley R. R	534,229	13,959.05	346,845	11,818.20				
Oregon R. R. & Navigation Co	625,657,117	7,232,726.84	495,322,384	6,270,442.40	517,461,163	6,513,071.75	459,151,403	6,053,465.81
St. Anthony R. R	1,851,552	102,227.27	1,869,701	99,731.38	871,339	60,756.18	702,603	57,754.23
Salmon River R. R	1,645,094	47,163.22	2,987,434	75,965.46	746,407	40,660.56		
Wyoming Western R. R	10,335,316	108,423.08	8,415,325	88,245.94	6,489,544	70,743.19	4,550,418	52,754.21
New East Tintic Ry					(b)		(b)	
Utah & Pacific R. R					972,197	42,702.29	1,276,420	51,769.92
Utah, Nevada & California R. R					263,225	9,580.42	249,771	7,649.50
Total	4,831,616,972	$43,183,435.72	4,067,389,840	$39,728,202.85	3,761,883,684	$36,496,007.22	3,480,941,108	$34,131,538.02

[1] Figures cover operations for six months ending June 30, 1909; road "under control of construction department" prior thereto.
[2] Figures from report for eleven months ending May 31, 1908; purchased by Union Pacific R. R.
[3] Figures include operations of Ilwaco Railway & Navigation Co. for period, July 1, 1906, to June 15, 1907, and of Ilwaco R. R. for period, June 16 to 30, 1907.
[4] Figures from report for period, June 15 to 30, 1906.
[5] No record, "the service being in the nature of switching."
Figures cover operations for period, Sept. 10, 1905, to June 30, 1906.

(Continued next page.)

UNION PACIFIC SYSTEM—Continued.

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Union Pacific R. R	1,772,460,115	$18,462,554.34	1,572,180,538	$16,504,304.87
Leavenworth, Kansas & Western Ry	7,504,439	178,234.84	9,138,325	200,702.27
Oregon R. R. & Navigation Co	422,105,982	5,651,030.26	341,317,667	4,857,527.89
Oregon Short Line R. R	843,441,446	7,251,208.34	737,497,926	6,372,318.73
New East Tintic Ry	[1]			
St. Anthony R. R	549,643	44,331.34		
Utah & Pacific R. R	[2] 1,386,847	[2] 19,686.26		
Wyoming Western R. R	[3] 527,924	[3] 7,549.03		
Salina & Southwestern Ry	[4] 46,211	[4] 929.40	795,900	14,250.10
Salina & Southwestern Ry	[5] 178,795	[5] 3,461.11		
Solomon R. R	[4] 242,725	[4] 3,963.03	4,496,312	62,189.68
Solomon R. R	[5] 1,315,668	[5] 18,225.71		
Carbon Cut-Off Ry			[6] 3,058,880	[6] 17,159.70
Echo & Park City Ry			[6] 1,108,318	[6] 25,218.53
Total	3,049,759,795	31,641,173.66	2,669,593,866	28,053,671.77

[1] No record, "the service being in the nature of switching."
[2] Figures from report for three months ending June 30, 1901.
[3] Figures from report for five months ending June 30, 1901.
[4] Figures from report for period July 1 to 20, 1900.
[5] Figures from report of receiver for period July 21 to September 30, 1900; merged in Union Pacific R. R.
[6] Figures from report for six months ending December 31, 1899; merged in Union Pacific R. R.

SOUTHERN PACIFIC SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30.	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	6,074,037,535	[1] $70,764,595.88	1.165
1908	6,489,812,450	[1] 71,822,006.67	1.107
1907	6,933,232,810	77,405,042.47	1.116
1906	6,260,937,730	65,164,821.08	1.041
1905	5,575,108,140	58,767,828.98	1.054
1904	6,492,610,088	56,652,915.79	0.873
1903	6,243,959,949	54,207,702.57	0.868
1902	5,985,727,004	52,747,345.68	0.881
1901	5,625,338,911	49,988,895.14	0.889
1900	4,871,542,072	41,997,305.70	0.862

[1] The classification of operating revenues became effective July 1, 1907.

(Continued next page.)

SOUTHERN PACIFIC SYSTEM—Continued.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Southern Pacific Co.	3,962,373,547	$49,215,877.37	4,118,507,783	$49,285,911.98	4,205,230,298	$50,682,730.86	3,741,887,878	$41,205,252.24
Galveston, Harrisburg & San Antonio Ry.	922,437,264	7,253,944.10	1,075,226,761	7,822,858.60	1,214,551,329	9,055,464.36	1,058,579,034	7,454,511.73
Hearne & Brazos Valley R. R.	97,255	22,379.43	76,014	15,559.41	[2]		[2]	
Houston & Shreveport R. R.	6,230,173	140,337.01	5,149,551	113,156.19	6,260,350	140,834.34	4,757,380	107,705.61
Houston & Texas Central R. R.	398,499,265	4,134,334.44	434,935,126	3,906,429.07	507,660,329	4,829,986.77	466,138,901	4,132,408.16
Houston East & West Texas Ry.	59,843,795	880,641.47	64,639,853	814,664.76	72,155,146	982,548.25	72,970,857	994,284.19
Lake Charles & Northern R. R.	[1] 2,226,911	[1] 24,984.60						
Louisiana Western R. R.	136,548,228	1,285,579.80	154,001,859	1,419,951.85	196,440,753	1,720,880.35	209,743,089	1,742,660.40
Morgan's Louisiana & Texas R. R. & Steamship Co.	248,257,675	3,178,540.37	268,945,658	3,429,297.30	302,264,340	3,853,924.66	295,987,526	3,882,175.98
Gulf, Western Texas & Pacific Ry.							[7] 255,851	[7] 9,430.79
Iberia & Vermilion R. R.	1,410,522	40,612.98	1,913,926	50,795.32	1,556,940	48,687.78	1,830,270	54,931.85
Texas & New Orleans R. R.	256,714,031	2,455,589.79	281,230,352	2,663,204.54	317,764,042	3,041,223.26	292,662,740	2,505,633.63
Arizona & Colorado R. R.	822,127	45,869.43	465,259	27,486.26				
Coos Bay, Roseburg & Eastern R. R. & Navigation Co.	4,185,602	122,374.37	3,928,019	126,269.11				
Corvallis & Eastern R. R.	5,810,175	144,520.84	3,495,745	119,312.74				
Gila Valley, Globe & Northern Ry.	37,471,893	837,860.68	34,541,658	[5] 47,994.39	37,551,454	875,166.52	34,381,832	781,749.53
Independence & Monmouth Ry.	[2]		[2]		[2]		[2]	
Maricopa & Phoenix R. R.	3,015,487	180,233.11	[3] 2,322,909	[3] 150,597.02				
Nevada & California Ry.	26,498,952	757,718.46	39,168,030	952,513.36	53,637,779	1,418,676.45	37,118,538	931,028.18
Phoenix & Eastern R. R.	1,594,033	62,197.63	1,263,947	76,004.77	[6] 746,967	[6] 29,153.23		
California Northwestern Ry.					[4] 1,361,818	[4] 80,418.75	1,905,416	130,686.43
California Northwestern Ry. (Lessee)					[4] 12,026,990	[4] 436,971.25	18,641,888	678,319.18
Maricopa & Phoenix & Salt River Valley R. R.					1,710,643	110,704.65	1,408,266	84,345.81
North Shore R. R.					[2] 2,313,632	[4] 97,660.99	3,031,246	158,266.01
Galveston, Houston & Northern Ry.							[6] 18,602,558	[6] 286,994.55
New York, Texas & Mexican Ry.							[7] 1,034,400	[7] 24,436.81
Total	6,074,037,535	70,764,595.88	6,489,812,450	71,822,006.67	6,933,232,810	77,405,042.47	6,260,937,730	65,164,821.08

[1] Figures from report for period, October 25, 1908, to June 30, 1909.
[2] No data reported.
[3] Understood to include operations of Maricopa & Phoenix and Salt River Valley R. R. for period, July 1 to 15, 1907.
[4] Figures from report for six months ending December 31, 1906; consolidated with certain other companies, forming Northwestern Pacific Ry.
[5] Figures from report for period, March 14 to June 30, 1907; formerly operated by Santa Fe, Prescott & Phoenix Ry.
[6] Figures from report for period, July 1 to September 28, 1905; merged in Galveston, Harrisburg & San Antonio Ry.
[7] Figures from report for period, July 1 to August 9, 1905; merged in Galveston, Harrisburg & San Antonio Ry.

SOUTHERN PACIFIC SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Southern Pacific Co	3,451,807,330	$37,810,358.31	4,159,850,044	$37,371,264.71	3,995,538,369	$35,468,698.86	3,972,371,799	$36,768,246.69
Galveston, Harrisburg & San Antonio Ry	845,649,960	5,391,570.19	1,024,432,655	5,465,664.59	1,003,986,211	5,216,360.00	1,003,183,721	5,521,006.18
Galveston, Houston & Northern Ry	69,695,624	1,097,762.30	87,786,781	1,122,272.13	71,111,426	1,088,475.38	24,960,490	317,304.15
Houston & Shreveport R. R	6,047,261	128,829.82	8,616,761	144,192.28	10,584,528	180,501.23	9,914,567	177,840.09
Houston & Texas Central R. R	379,015,533	3,670,230.89	455,338,033	3,698,853.81	396,229,090	3,757,793.19	322,400,805	3,602,843.40
Houston East & West Texas Ry	53,180,838	765,644.09	49,261,010	573,804.32	55,085,666	639,585.04	52,164,237	658,967.30
Louisiana Western R. R	178,220,394	1,638,312.83	136,367,106	1,288,863.93	159,782,574	1,301,484.85	[3]108,553,304	[3]734,655.40
Morgan's Louisiana & Texas R. R. & Steamship Co	283,136,697	4,022,269.44	241,154,138	3,290,943.89	255,342,634	3,371,856.75	[3]163,484,190	[3]1,855,028.64
Gulf, Western Texas & Pacific Ry	2,251,202	79,373.91	2,337,645	90,072.40	2,822,815	95,519.07	2,137,703	87,992.56
Iberia & Vermilion R. R	1,739,552	61,636.89	1,504,964	54,738.01	1,571,892	51,451.25	1,736,941	46,162.78
New York, Texas & Mexican Ry	14,914,544	352,695.29	14,056,941	320,759.96	15,596,695	347,186.57	11,491,257	279,661.37
Texas & New Orleans R. R	248,332,459	2,388,819.38	289,557,377	2,499,998.72	260,556,703	2,123,874.36	299,709,351	2,172,985.65
Carson & Colorado Ry	[1]16,739,029	[1]542,821.79	11,603,349	292,749.57	9,281,425	328,393.95	7,233,547	245,460.76
Gila Valley, Globe & Northern Ry	16,610,474	581,693.76	9,702,585	367,809.92	6,469,921	236,542.07	6,391,152	279,190.71
Nevada & California Ry	[3]6,552,414	[3]172,268.65						
Maricopa & Phoenix & Salt River Valley R. R	1,214,829	63,541.44	1,040,699	70,925.55				
Total	5,575,108,140	58,767,828.98	6,492,610,088	56,652,913.79	6,243,959,949	54,207,702.57	5,985,727,064	52,747,345.68

[1] Figures from report for ten months ending April 30, 1905; reorganized as Nevada & California Ry.
[2] Figures from report for two months ending June 30, 1905.
[3] Figures from report for six months ending June 30, 1902; operations for first six months of year covered by returns for Southern Pacific Co.

(Continued next page.)

SOUTHERN PACIFIC SYSTEM—Continued.

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Southern Pacific Co.	3,938,420,945	$36,691,784.19	3,459,211,175	$32,061,185.27
Austin & Northwestern R. R.	5,493,967	181,444.57	4,235,641	104,460.17
Galveston, Harrisburg & San Antonio Ry.	949,165,805	5,348,169.72	916,289,581	4,945,538.56
Central Texas & Northwestern Ry.	6,642,608	108,138.39	4,352,602	89,175.91
Fort Worth & New Orleans Ry.	20,978,484	273,267.04	13,583,610	255,063.51
Houston & Shreveport R. R.	6,543,286	148,456.61		
Houston & Texas Central R. R.	311,686,736	3,532,237.31	226,740,380	2,753,096.38
Houston East & West Texas Ry.	43,750,524	640,080.47		
Gulf, Western Texas & Pacific Ry.	2,058,132	70,597.42	1,765,538	65,094.73
Iberia & Vermilion R. R.	859,364	27,133.35	651,390	23,619.28
New York, Texas & Mexican Ry.	8,235,751	199,309.44	7,952,494	221,482.08
Texas & New Orleans R. R.	298,313,723	2,072,977.39	233,460,910	1,385,754.15
Gila Valley, Globe & Northern Ry.	6,138,303	281,555.31		
Galveston, Houston & Northern Ry.	23,361,901	292,206.20	(1)	
Carson & Colorado Ry.	3,089,382	121,546.73	3,292,751	112,835.66
Total.	5,625,338,911	49,988,895.14	4,871,542,072	41,997,305.70

(1) No data reported.

NORTHERN PACIFIC SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30—	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	5,296,712,596	[1] $47,539,098.54	0.898
1908	5,204,822,046	[1] 46,920,738.64	0.901
1907	5,567,901,445	48,503,209.44	0.871
1906	5,316,469,690	44,266,366.22	0.833
1905	4,430,040,374	37,048,260.27	0.836
1904	3,771,754,419	33,179,465.03	0.880
1903	3,927,429,955	33,730,703.68	0.859
1902	3,403,576,399	30,480,910.80	0.896
1901	2,520,502,263	23,740,460.97	0.942
1900	2,387,789,327	23,445,590.70	0.982

[1] The classification of operating revenues became effective July 1, 1907.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Northern Pacific Ry	5,260,492,660	$47,073,305.13	5,156,378,369	$46,423,836.33	5,504,444,098	$47,668,243.59	5,245,260,080	$43,431,781.61
Big Fork & International Falls Ry	622,223	19,684.70	[1] 100,965	[1] 5,519.76				
Minnesota & International Ry	35,069,322	406,702.33	48,052,206	472,275.30	49,847,123	450,304.63	58,719,330	457,774.82
North Yakima & Valley Ry	202,409	19,198.65						
Port Townsend Southern R. R	325,982	20,207.73	290,506	19,107.25	430,611	23,034.28	306,629	21,770.52
Washington & Columbia River Ry					13,179,613	361,566.94	12,183,651	355,039.27
Total	5,296,712,596	47,539,098.54	5,204,822,046	46,920,738.64	5,567,901,445	48,503,209.44	5,316,469,690	44,266,366.22

[1] Report received too late for inclusion in "Statistics of Railways in the United States."

(Continued next page.)

NORTHERN PACIFIC SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Northern Pacific Ry	4,359,664,201	$36,264,128.63	3,685,672,022	$32,434,044.25	3,815,942,943	$32,725,997.23	3,300,253,137	$29,709,699.55
Minnesota & International Ry	58,194,532	359,046.80	76,039,963	445,919.46	97,101,314	513,288.69	91,508,115	374,899.15
Port Townsend Southern R. R	257,175	15,672.44	355,957	18,978.69	[1] 252,991	[1] 14,300.90		
Washington & Columbia River Ry	11,924,466	409,412.40	9,086,477	281,422.63	11,225,299	357,839.61	11,815,147	396,312.10
Bellingham Bay & Eastern R. R					[1] 759,684	[1] 44,182.11		
Monte Cristo Ry					2,147,724	75,095.14		
Total	4,430,040,374	37,048,260.27	3,771,754,419	33,179,465.03	3,927,429,955	33,730,703.68	3,403,576,399	30,480,910.80

	Year ending June 30, 1901.		Year ending June 30, 1900	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Northern Pacific Ry	2,440,662,665	$23,036,438.22	2,205,317,271	$21,783,904.19
Washington & Columbia River Ry	10,054,199	340,483.31	8,465,070	290,704.35
St. Paul & Duluth R. R			174,006,986	1,370,982.16
Brainerd & Northern Minnesota Ry	69,785,399	363,685.44		
Total	2,520,502,263	23,740,606.97	2,387,789,327	23,445,590.70

[1] Figures from report for seven months ending June 30, 1903.

[2] Figures from report for period Oct. 11, 1902, to June 30, 1903.

ATCHISON, TOPEKA & SANTA FE SYSTEM.

Recapitulation of statement showing tons carried 1 mile, freight revenue, etc.

Year ending June 30—	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	6,265,544,554	[1] $64,393,507.64	1.028
1908	6,515,982,300	[1] 62,047,098.12	0.952
1907	6,800,460,705	65,810,969.36	0.968
1906	5,908,656,205	56,635,752.52	0.959
1905	4,789,538,106	49,120,700.79	1.026
1904	4,753,435,306	49,611,813.19	1.044
1903	4,783,385,036	46,372,580.61	0.969
1902	4,291,289,273	43,287,148.31	1.009
1901	3,904,132,156	39,602,527.04	1.014
1900	3,476,426,359	34,210,067.88	0.984

[1] The classification of operating revenues became effective July 1, 1907.

(Continued next page.)

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Atchison, Topeka & Santa Fe Ry.	5,063,578,166	$51,894,385.32	5,434,966,245	$51,375,455.38	5,672,786,719	$52,845,504.50	3,649,603,435	$32,811,356.18
Southern Kansas Ry. Co. of Texas	80,525,203	911,526.06	49,663,530	616,041.94	47,841,510	537,501.61	36,367,081	414,105.77
Eastern Ry. Co. of New Mexico	28,044,447	556,732.57	19,842,311	488,719.05				
Pecos & Northern Texas Ry.	60,315,428	954,452.79	30,691,485	546,911.45	31,552,558	532,403.34	22,824,524	326,179.72
Pecos River R. R.	1,110,962	32,288.54	1,116,823	19,373.63	1,191,448	26,326.91	893,250	23,341.31
Gulf, Colorado & Santa Fe Ry.	995,743,668	8,933,034.47	933,232,235	7,778,228.34	972,918,532	9,560,905.26	811,917,581	7,269,639.30
Texas & Gulf Ry.	4,880,315	157,646.99	5,484,962	192,370.28	5,304,272	182,842.95	[4]	
Arizona & California Ry.	412,045	19,462.00						
Grand Canyon Ry.	79,518	3,850.55	328,927	6,689.33	98,945	4,926.83	45,462	3,884.87
Santa Fe, Prescott & Phoenix Ry.	30,854,772	930,218.35	40,655,782	1,023,908.72	36,612,345	1,186,580.98	25,149,920	1,029,917.73
Denver, Enid & Gulf R. R.					11,864,123	198,430.39	3,306,907	100,340.52
Beaumont Wharf & Terminal Co.	[1]		[1]		[2]		[2]	
Pecos Valley & Northeastern Ry.					17,821,595	612,656.43	15,633,280	427,904.93
Fort Bragg & Southeastern R. R.					[3] 165,360	[3] 9,658.11	[4]	
San Francisco & Northwestern Ry.					[3] 2,303,298	[3] 113,232.05	2,404,601	120,888.70
Arizona & Utah Ry.							[5] 46,321	[5] 4,391.92
Atchison, Topeka & Santa Fe Ry.—Coast Lines.							1,340,403,843	14,103,801.57
Total.	6,265,544,554	64,393,597.64	6,515,982,300	62,047,698.12	6,800,460,705	65,810,969.36	5,908,656,205	56,635,752.52

[1] Files report in "Form C.—Switching and Terminal Companies," which does not require these data.
[2] Company performs switching only.
[3] Figures from report for six months ending December 31, 1906; consolidated with certain other roads, forming Northwestern Pacific R. R.
[4] No data reported.
[5] Figures from report for period, July 1, 1905, to January 10, 1906; reorganized as Western Arizona Ry.

ATCHISON, TOPEKA & SANTA FE—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Atchison, Topeka & Santa Fe Ry	2,942,137,001	$28,215,709.12	2,931,269,585	$28,769,202.12	2,991,428,744	$26,941,763.46	2,822,805,393	$26,125,737.93
Southern Kansas Ry. Co. of Texas	21,030,118	288,355.59	21,378,669	305,094.13	22,511,362	298,480.77	17,118,660	236,876.73
Pecos & Northern Texas Ry	12,077,557	246,277.28	11,092,176	234,741.65	14,431,697	282,626.08	9,938,507	212,043.23
Pecos River R. R	1,092,757	25,280.82	994,994	24,390.72	1,819,544	33,014.43	1,488,456	26,265.50
Gulf, Colorado & Santa Fe Ry	632,456,502	6,511,607.41	658,216,739	6,319,508.13	718,567,974	6,242,849.04	534,338,397	[5] 5,450,837.36
Grand Canyon Ry	53,905	3,218.82	80,007	5,134.53	26,352	1,837.73	[5] 52,092	[5] 2,862.86
Santa Fe, Prescott & Phoenix Ry	19,146,321	796,712.34	23,551,509	827,902.01	21,119,195	650,253.00	16,370,671	679,861.80
Beaumont Wharf & Terminal Co	[1]		[1]		[1]		[1]	
Pecos Valley & Northeastern Ry	14,363,414	319,370.84	10,876,488	255,689.94	14,083,089	328,047.66	10,710,043	212,839.06
San Francisco & Northwestern Ry	4,466,813	153,990.91	8,803,380	152,890.97				
Atchison, Topeka & Santa Fe Ry.—Coast Lines	1,135,945,365	12,393,310.24	946,938,682	9,664,686.01	861,708,565	8,700,601.93		
Cane Belt R. R	6,768,353	166,867.42	3,747,059	144,552.95				
Gulf, Beaumont & Kansas City Ry			[2] 12,019,882	[2] 293,857.19	26,131,276	422,518.09	19,611,643	274,977.41
Southern California Ry			[3] 124,466,136	[3] 2,704,162.84	111,264,320	2,438,743.51	97,276,393	2,217,374.26
Kansas Southwestern Ry							[6] 1,004,441	[6] 34,473.52
San Francisco & San Joaquin Valley Ry							109,852,331	1,670,061.42
Santa Fe Pacific R. R							650,379,305	6,114,719.35
Randsburg Ry					[4] 233,008	[4] 31,844.91		
California Eastern Ry							342,881	28,217.88
Total	4,789,538,106	49,120,700.79	4,753,435,306	49,611,813.19	4,783,385,036	46,372,580.61	4,291,289,273	43,287,148.31

[1] Company performs switching only.
[2] Figures from report for five months ending November 30, 1903; leased to Gulf, Colorado & Santa Fe Ry.
[3] Figures from report for eleven months ending May 31, 1904; leased to Atchison, Top. & S. F. Ry.
[4] Figures from report for ten months ending April 30, 1903; proprietary to Atch., Top. & S. Fe Ry.—Coast Lines since that date.
[5] Figures from report for ten months ending June 30, 1902.
[6] Figures from report for period, October 26, 1901, to June 30, 1902.

(Continued next page.)

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Atchison, Topeka & Santa Fe Ry.	2,672,741,798	$25,054,414.97	2,398,466,130	$22,307,357.97
Southern Kansas Ry. Co. of Texas.	10,155,935	172,948.52	13,584,700	174,369.66
Pecos & Northern Texas Ry.	6,350,805	146,140.01		
Pecos River R. R.	771,768	18,248.56		
Gulf, Colorado & Santa Fe Ry.	466,422,576	5,443,937.68	457,175,829	4,543,546.87
Beaumont Wharf & Terminal Co.	(1)			
Pecos Valley & Northeastern Ry.	7,336,333	154,586.18		
Gulf, Beaumont & Kansas City Ry.	12,879,906	230,994.86		
Southern California Ry.	86,920,451	1,898,947.64	73,631,392	1,835,541.70
San Francisco & San Joaquin Valley Ry.	71,831,607	1,186,408.58	21,834,574	481,335.05
Sante Fe Pacific R. R.	508,720,977	5,295,900.04	511,733,734	4,898,516.63
Hutchinson & Southern Ry.			(2)	
Total.	3,904,132,156	39,602,527.04	3,476,426,359	34,210,667.88

[1] Company performs switching only.

[2] No data reported.

GREAT NORTHERN SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30—	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	4,845,068,425	[1] $39,525,538.1	0.816
1908	5,165,817,700	[1] 40,357,515.67	0.781
1907	5,410,791,059	42,133,063.33	0.779
1906	4,968,493,899	39,731,035.53	0.800
1905	4,198,863,670	33,596,876.33	0.799
1904	3,376,876,341	30,384,088.88	0.900
1903	3,630,949,538	31,387,266.89	0.864
1902	3,214,482,163	27,997,247.24	0.871
1901	2,499,752,598	22,032,331.14	0.881
1900	2,521,521,010	23,006,192.62	0.912

[1] The classification of operating revenues became effective July 1, 1907.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Great Northern Ry	4,806,810,500	$39,159,439.76	5,132,087,094	$40,046,393.85	4,920,792,956	$37,175,720.92	4,484,575,584	$34,898,734.94
Duluth Terminal Ry	[1]		[1]		[2]		[2]	
Minneapolis Western Ry	[1]		[1]		[2]			
Farmers' Grain & Shipping Co	2,724,662	53,453.33	1,654,494	38,727.93				
Iowa & Great Northern Ry	35,162,701	305,370.89	[2] 31,937,064	[2] 265,026.29				
Kootenai Valley Ry	370,502	7,274.16	139,048	7,367.60				
Duluth, Watertown & Pacific Ry					3,797,324	147,003.37	3,107,659	133,856.04
Minneapolis Union Ry					[2]		[2]	
Willmar & Sioux Falls Ry					145,703,303	1,590,733.70	128,839,052	1,581,971.92
Spokane Falls & Northern Ry					32,930,515	567,459.11	29,779,554	514,575.67
Columbia & Red Mountain Ry					650,246	19,948.82	483,800	18,200.64
Washington & Great Northern Ry					7,052,416	275,463.86	4,699,548	153,527.66
Montana Central Ry					299,864,299	2,356,733.55	317,008,702	2,430,168.66
Total	4,845,068,425	39,525,538.14	5,165,817,700	40,357,515.67	5,410,791,059	42,133,063.33	4,968,493,899	39,731,035.53

[1] Files report in "Form C—Switching and Terminal Companies," which does not require these data.
[2] Figures cover operations for eight months ending June 30, 1908.
[3] No data reported; terminal company.

(Continued next page.)

GREAT NORTHERN SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Great Northern Ry	3,783,809,959	$29,638,762.59	3,006,379,217	$26,725,555.67	3,281,315,600	$27,902,409.55	2,294,335,466	$21,002,636.68
Duluth Terminal Ry	[1]		[2]		[3]		[3]	
Duluth, Watertown & Pacific Ry	2,077,361	92,700.32	2,387,488	114,087.43	2,278,448	86,055.93	1,925,038	79,681.71
Willmar & Sioux Falls Ry	92,694,695	1,242,698.05	78,592,953	1,107,593.25	71,574,455	1,098,664.79	79,515,216	1,197,951.83
Spokane Falls & Northern Ry	25,382,633	429,488.96	23,479,767	392,967.34	22,218,455	418,041.71	22,466,159	525,467.11
Columbia & Red Mountain Ry	1,028,515	31,514.55	1,594,485	46,821.22	1,896,207	53,990.89	1,798,522	62,762.90
Montana Central Ry	291,578,653	2,039,561.42	264,442,431	1,997,063.97	251,666,673	1,828,104.02	177,199,607	1,385,413.78
Eastern Ry. Co. of Minnesota							[4] 637,242,155	[4] 3,743,333.23
Washington & Great Northern Ry	2,297,854	92,150.44						
Minneapolis Union Ry	[1]							
Total	4,198,869,670	33,566,876.33	3,376,876,341	30,384,088.88	3,630,949,838	31,387,266.89	3,214,482,163	27,997,247.24

[1] No data reported; terminal company.
[4] Figures cover operations for ten months ending April 30, 1902; leased to Great Northern Ry.

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Great Northern Ry	1,660,960,215	$15,367,999.28	1,722,683,402	$16,645,519.35
Duluth Terminal Ry	[1]		[1]	
Duluth, Watertown & Pacific Ry	1,281,316	49,795.26	1,760,901	69,546.17
Willmar & Sioux Falls Ry	79,768,269	1,210,198.54	60,853,751	957,028.68
Sioux City & Western Ry			[2] 3,042,034	[2] 97,082.13
Spokane Falls & Northern Ry	15,940,572	339,813.22	12,699,984	319,426.92
Columbia & Red Mountain Ry	2,060,831	68,863.97	1,006,110	56,663.64
Montana Central Ry	216,634,280	1,801,749.13	185,942,470	1,665,009.28
Eastern Ry. Co. of Minnesota	523,107,115	3,193,911.74	533,532,358	3,195,316.45
Total	2,499,752,598	22,032,331.14	2,521,521,010	23,006,192.62

[1] No data reported; terminal company.
[2] Figures from report for six months ending December 31, 1899; proprietary road of Willmar & Sioux Falls Ry.

DENVER & RIO GRANDE SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30—	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	1,174,311,158	[1] $15,753,654.01	1.342
1908	1,096,283,904	[1] 15,009,537.13	1.369
1907	1,141,943,238	15,690,954.96	1.374
1906	1,090,046,302	14,388,232.36	1.320
1905	901,621,028	12,284,161.98	1.362
1904	862,060,140	11,731,104.44	1.361
1903	1,000,728,608	12,692,877.25	1.268
1902	998,010,972	12,150,028.12	1.217
1901	641,959,191	8,488,442.64	1.322
1900	571,209,599	7,651,643.23	1.340

[1] The classification of operating revenues became effective July 1, 1907.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Denver & Rio Grande R. R	1,161,236,025	$15,163,254.04	1,082,599,384	$14,369,567.48	1,131,113,993	$15,223,165.46	1,078,347,946	$13,943,556.31
Rio Grande Southern R. R	9,907,211	426,392.46	9,695,086	443,773.39	10,829,245	467,789.50	10,510,356	435,023.01
Boca & Loyalton R. R	3,167,922	164,007.51	3,539,022	176,126.54			[1]	
San Pete Valley Ry			450,412	20,069.72				
Rio Grande & Southwestern R. R							1,188,000	9,653.04
Total	1,174,311,158	15,753,654.01	1,096,283,904	15,009,537.13	1,141,943,238	15,690,954.96	1,090,046,302	14,388,232.36

[1] No data reported.

(Continued next page.)

DENVER & RIO GRANDE SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Denver & Rio Grande R. R.	892,141,090	$11,932,419.62	853,202,603	$11,398,104.43	990,255,269	$12,281,492.15	998,010,972	$12,150,028.12
Rio Grande Southern R. R.	8,654,938	346,825.25	8,767,537	333,000.01	10,473,339	411,385.10	(1)	
Rio Grande & Southwestern R. R.	825,000	4,917.11						
Total	901,621,028	12,284,161.98	862,060,140	11,731,104.44	1,000,728,608	12,692,877.25	998,010,972	12,150,028.12

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Denver & Rio Grande R. R.	641,959,191	$8,488,442.64	571,209,599	$7,651,643.23
Rio Grande Southern R. R.	(1)		(1)	
Total	641,959,191	8,488,442.64	571,209,599	7,651,643.23

(1) No data reported.

CANADIAN PACIFIC SYSTEM.

Recapitulation of Statement Showing Tons Carried 1 Mile, Freight Revenue, etc.

Year ending June 30—	Tons carried 1 mile.	Freight revenue.	Average receipts per ton per mile.
			Cents.
1909	8,384,285,948	[1] $63,841,746.54	0.761
1908	6,913,959,864	[1] 53,483,314.81	0.774
1907	7,446,796,218	58,086,873.38	0.780
1906	6,758,158,148	51,132,256.33	0.757
1905	5,308,063,762	40,872,783.32	0.770
1904	4,713,813,863	36,528,004.01	0.775
1903	4,795,355,112	36,180,118.47	0.755
1902	4,074,323,488	31,170,855.54	0.765
1901	3,102,561,128	24,576,136.01	0.792
1900	3,494,916,465	25,965,711.39	0.743

[1] The classification of operating revenues became effective July 1, 1907.

	Year ending June 30, 1909.		Year ending June 30, 1908.		Year ending June 30, 1907.		Year ending June 30, 1906.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Canadian Pacific Ry.	6,210,086,958	$47,181,205.90	5,099,092,014	$43,032,803.55	5,946,779,961	$45,885,968.16	5,342,248,625	$39,512,973.18
International Ry. of Maine	140,266,990	678,390.62	136,181,621	659,869.91	134,393,142	680,750.92	137,653,928	657,644.58
Newport & Richford R. R.	15,095,188	110,002.42	13,388,061	39,614.19				
Duluth, South Shore & Atlantic Ry.	171,817,332	1,634,089.37	180,751,208	1,783,169.83	237,879,967	2,025,200.19	227,172,246	1,930,240.05
Mineral Range R. R.	63,019,859	757,675.06	58,793,744	738,875.14	55,739,254	715,887.73	55,585,245	674,678.99
Minneapolis, St. Paul & Sault Ste. Marie Ry.	1,087,193,221	8,622,167.84	961,934,837	7,828,851.10	1,178,634,051	9,506,447.12	1,084,153,866	8,408,674.79
Wisconsin Central Ry.	835,885,906	5,509,440.71						
Abbotsford & Northeastern R. R.	1,187,484	27,105.24						
Montreal & Atlantic Ry.					47,771,985	553,271.18	48,908,166	545,709.41
Sainte Marie Union Depot Co.	[1]		[1]		[1]		[1]	
Sault Ste. Marie Bridge Co.	[1]		[1]		[1]		[1]	
Total[2]	8,384,285,948	63,841,746.54	6,913,959,864	53,483,314.81	7,446,796,218	58,086,873.38	6,758,158,148	51,132,256.33

[1] No data reported; terminal company.

[2] Excludes data shown against International Ry. of Maine. See "Statement of operating revenues, etc."

(Continued next page.)

CANADIAN PACIFIC SYSTEM—Continued.

	Year ending June 30, 1905.		Year ending June 30, 1904.		Year ending June 30, 1903.		Year ending June 30, 1902.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Canadian Pacific Ry	4,155,256,309	$31,725,290.10	3,809,801,952	$29,235,821.04	3,802,232,893	$28,502,081.76	3,247,922,167	$24,199,428.14
International Ry. of Maine	98,283,191	513,481.52	100,869,755	471,596.42	100,545,442	463,359.81	91,157,631	461,971.90
Duluth, South Shore & Atlantic Ry	178,924,895	1,679,643.41	142,010,610	1,434,351.10	148,858,714	1,574,536.76	139,431,327	1,577,376.96
Mineral Range R. R	49,142,613	616,552.04	39,676,574	527,018.10	32,443,076	489,853.38	28,632,681	498,638.55
Minneapolis, St. Paul & Sault Ste. Marie Ry	882,474,735	6,387,247.86	678,504,595	4,987,476.36	705,754,739	5,254,735.41	617,746,549	4,566,222.89
Montreal & Atlantic Ry	42,895,210	464,049.91	43,820,112	343,337.41	46,065,690	364,891.16	40,590,964	329,189.00
Sault Ste. Marie Bridge Co	[1]		[1]		[1]		[1]	
Total [2]	5,308,693,762	40,872,783.32	4,713,813,843	36,528,004.01	4,795,355,112	36,186,118.47	4,074,323,688	31,170,855.54

	Year ending June 30, 1901.		Year ending June 30, 1900.	
	Tons carried 1 mile.	Freight revenue.	Tons carried 1 mile.	Freight revenue.
Canadian Pacific Ry	2,383,633,945	$18,983,185.51	2,690,817,958	$19,587,780.85
International Ry. of Maine	65,996,102	331,952.24	82,374,836	384,303.85
Duluth, South Shore & Atlantic Ry	121,260,119	1,493,020.71	142,585,676	1,653,879.81
Mineral Range R. R	8,601,906	245,179.37	5,892,961	192,936.45
Hancock & Calumet R. R	[3] 11,976,004	[3] 230,475.60	14,136,459	249,317.33
Minneapolis, St. Paul & Sault Ste. Marie Ry	535,017,533	3,298,651.28	603,856,370	3,974,398.70
Montreal & Atlantic Ry	42,101,621	325,623.54	37,627,021	307,398.25
Total [2]	3,102,591,128	24,576,136.01	3,494,916,445	25,965,711.39

[1] No data reported; terminal company.
[2] Excludes data shown against International Ry. of Maine. See "Statement of Operating Revenues, etc."
[3] Figures from report for eleven months ending May 31, 1901; proprietary to Mineral Range R. R. since that date.

Q. Calling your attention to Complainant's Exhibit 215, statement showing operating revenues, operating expenses, ratio of operating expenses to operating revenues (per cent), transportation expenses, ratio of transportation expenses to total operating expenses (per cent), and average mileage operated during the year, I will ask you whether that statement was prepared under your supervision?

A. It was.

Q. And were the systems as stated there arrived at by amalgamating the main company and the subsidiary lines, as stated with reference to Exhibit 214?

A. Yes, sir.

Q. So that it contains a complete exposition of the matters herein stated as appears from the annual reports of the various companies named?

A. Yes, sir.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 215 (Peter).

Complainant's Exhibit 215 is as follows:

COMPLAINANT'S EXHIBIT 215.

(Peter.)

INTERSTATE COMMERCE COMMISSION.

(Washington.)

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of data in the original annual reports of the carriers severally named, now on file with this Commission, or represent totals, averages, etc., based on those reports.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Commission this Thirtieth day of March, 1910

(Sgd) EDW. A. MOSELEY,
Secretary.

(Seal Interstate Commerce Commission, 1887.)

GRAND RECAPITULATION

Of Statement Showing Operating Revenues, Operating Expenses, etc.

	1909.[1]	1908.[1]	1907.	1906.	1905.	1904.	1903.	1902.	1901.	1900.
Operating revenues:						$54				
Union Pacific System	$77,509,597	$74,764,289	$76,016,061	$67,466,368	$59,047,646	56,601,765	$50,519,230	$46,864,994	$43,089,402	$38,750,241
Southern Pacific System	111,982,621	114,444,025	119,244,299	101,808,329	90,450,106	47,904,265	82,706,620	78,728,398	73,012,459	63,338,506
Northern Pacific System	69,152,244	68,977,631	69,596,991	62,231,783	51,816,604	,635,456	47,457,525	42,313,782	33,398,255	32,320,644
Atchison, Topeka & Santa Fe System	94,735,587	91,075,629	94,753,377	81,785,054	71,288,925	71,241,655	65,137,373	61,488,704	55,426,342	47,082,308
Great Northern System	53,780,473	54,506,874	56,999,891	52,766,018	44,871,839	40,946,815	41,643,798	37,090,580	29,133,888	29,800,942
Denver & Rio Grande System	21,654,368	21,240,977	21,821,202	20,204,973	17,309,402	16,741,871	17,771,220	17,525,555	11,979,527	10,756,817
Canadian Pacific System	95,192,983	81,803,086	90,137,787	77,920,832	63,398,557	57,344,719	55,252,325	47,647,117	39,016,609	39,530,649
Operating expenses:										
Union Pacific System	36,619,246	40,479,515	40,518,844	35,260,853	30,097,972	28,288,171	26,660,074	23,503,734	22,839,905	19,777,139
Southern Pacific System	67,473,785	76,323,361	74,611,042	64,597,786	58,668,945	58,039,595	55,470,951	50,681,719	45,759,889	40,672,449
Northern Pacific System	38,388,688	40,352,183	38,238,889	31,678,802	27,521,115	24,955,206	24,974,695	21,869,125	17,116,708	15,877,406
Atchison, Topeka & Santa Fe System	57,832,417	61,195,109	59,981,996	51,143,354	47,802,654	44,600,380	40,588,944	35,796,188	33,391,169	28,484,472
Great Northern System	32,613,545	36,248,897	33,285,317	26,399,644	21,941,178	20,968,806	20,478,317	18,161,400	16,251,208	15,186,446
Denver & Rio Grande System	14,935,923	13,615,675	13,898,366	12,750,940	10,639,600	10,519,023	10,939,537	10,692,038	7,437,184	6,785,725
Canadian Pacific System	65,296,505	56,954,797	57,397,040	47,311,590	42,282,016	38,817,496	34,538,642	28,972,448	23,884,913	23,235,860
Ratio of operating expenses to operating revenues (per cent):										
Union Pacific System	47.24	54.14	53.30	52.26	50.97	51.81	52.77	50.15	53.01	51.04
Southern Pacific System	60.25	66.69	62.57	63.45	64.86	66.79	67.07	64.38	62.67	64.21
Northern Pacific System	55.66	58.50	54.94	50.90	53.11	52.39	52.63	51.68	51.25	49.12
Atchison, Topeka & Santa Fe System	61.05	67.19	63.30	62.53	67.05	62.60	62.31	58.22	60.24	60.50
Great Northern System	60.64	66.50	58.40	50.03	48.90	51.21	49.17	48.96	55.78	50.96
Denver & Rio Grande System	68.97	64.10	63.69	63.11	61.47	62.83	61.67	61.01	62.08	63.08
Canadian Pacific System	68.59	69.62	63.68	60.72	66.69	67.69	62.51	60.81	61.22	58.78
Transportation expenses:										
Union Pacific System	17,980,732	19,591,051	20,444,687	16,420,336	14,073,993	14,137,192	13,962,435	11,801,206	11,747,543	10,672,138
Southern Pacific System	32,983,719	37,862,879	39,731,724	30,572,714	29,772,584	31,959,556	29,974,496	27,870,980	26,098,322	23,430,417
Northern Pacific System	20,525,830	20,974,432	22,168,124	16,851,571	13,690,343	12,913,662	12,634,446	10,422,109	8,323,261	7,266,629
Atchison, Topeka & Santa Fe System	26,855,191	28,689,724	30,379,769	24,922,031	22,691,058	22,804,284	20,404,188	19,662,771	18,176,438	15,518,917
Great Northern System	14,860,609	16,753,430	18,144,913	13,802,802	11,442,358	11,617,396	11,045,710	9,736,800	8,613,501	7,919,309
Denver & Rio Grande System	7,534,682	6,983,656	7,806,283	6,998,155	5,903,420	5,779,054	6,046,837	5,806,487	4,266,421	3,982,034
Canadian Pacific System	33,629,615	29,504,380	32,149,636	25,798,177	22,888,145	21,908,679	18,901,867	15,900,523	13,362,072	13,338,909
Ratio of transportation expenses to total operating expenses (per cent):										
Union Pacific System	49.10	48.40	50.46	46.57	46.76	49.98	52.37	50.21	51.43	53.96
Southern Pacific System	48.88	49.61	53.25	47.33	50.75	55.07	54.04	54.99	57.03	57.61
Northern Pacific System	53.33	51.98	57.97	53.20	49.74	51.75	50.59	47.66	48.63	45.77
Atchison, Topeka & Santa Fe System	46.44	46.88	50.65	48.73	47.47	51.13	50.27	54.93	54.43	54.48
Great Northern System	45.57	46.22	54.51	52.28	52.15	55.40	53.94	53.61	53.00	52.15
Denver & Rio Grande System	50.45	51.29	56.17	54.88	55.49	54.94	55.17	54.31	57.37	58.68
Canadian Pacif System	51.50	51.80	56.01	54.53	54.13	56.44	54.73	54.88	55.94	57.41

Grand Recapitulation—Continued.

Average mileage operated during year:										
Union Pacific System	6,165.86	5,973.75	5,851.77	5,710.75	5,549.50	5,542.43	5,956.89	5,908.78	5,823.60	5,734.42
Southern Pacific System	9,919.49	9,752.52	9,523.57	9,458.12	9,053.25	8,900.56	8,718.02	8,658.64	8,546.27	8,044.07
Northern Pacific System	5,941.12	5,904.21	5,845.67	5,787.75	5,678.47	5,632.76	5,512.99	5,291.89	5,355.27	5,123.16
Atchison, Topeka & Santa Fe System	10,045.52	9,558.29	9,472.63	9,399.14	9,260.28	9,117.41	8,789.04	8,682.82	8,261.08	7,723.21
Great Northern System	6,900.21	6,660.41	6,233.16	6,145.58	5,947.99	5,776.88	5,639.69	5,426.63	5,447.23	5,390.46
Denver & Rio Grande System	2,764.35	2,774.64	2,680.20	2,729.69	2,633.79	2,578.75	2,558.12	2,527.74	1,853.63	1,837.12
Canadian Pacific System	14,064.46	12,260.92	12,118.24	11,627.98	11,185.55	10,764.73	10,105.03	9,871.83	9,735.00	9,584.01

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

UNION PACIFIC SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909[1]	$77,509,597	$36,619,246	47.24	$17,980,732	49.10
1908[1]	74,764,289	40,479,515	54.14	19,591,051	48.40
1907	76,016,061	40,518,844	53.30	20,444,687	50.46
1906	67,466,308	35,260,853	52.26	16,420,336	46.57
1905	59,047,646	30,097,972	50.97	14,073,993	46.76
1904	54,601,765	28,288,171	51.81	14,137,192	49.98
1903	50,519,230	26,660,074	52.77	13,962,435	52.37
1902	46,864,994	23,503,734	50.15	11,801,206	50.21
1901	43,089,402	22,839,905	53.01	11,747,543	51.43
1900	38,750,241	19,777,139	51.04	10,672,138	53.96

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

UNION PACIFIC—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Union Pacific R. R	$46,949,311	$22,782,655	48.52	$11,011,687	48.33	$4,707,280	$4,845,605	3,306.68
Ilwaco R. R	55,769	49,964	89.60	20,130	40.29	23,416	2,978	28.65
Oregon Short Line R. R	17,784,587	7,313,702	41.12	3,386,590	46.31	1,634,833	1,697,739	1,460.15
Oregon R. R. & Navigation Co	12,626,531	6,406,719	50.74	3,516,632	54.89	1,340,033	891,256	1,295.30
Oregon & Washington R. R.[1]	12,101	8,768	72.46	3,916	44.66	3,998	656	3.05
Oregon, Washington & Idaho R. R	81,298	57,438	70.65	41,777	72.74	9,285	1,553	72.03
Total	77,509,597	36,619,246	47.24	17,980,732	49.10	7,718,845	7,439,787	6,165.86
Year ending June 30, 1908:								
Union Pacific R. R	44,059,030	25,109,347	56.99	12,076,119	48.10	5,575,343	5,373,998	3,083.85
Leavenworth, Kansas & Western Ry.[2]	301,556	273,374	90.65	118,524	43.35	113,126	23,221	175.96
Ilwaco R. R	39,956	28,625	71.64	17,146	59.90	6,411	3,347	16.38
Oregon Short Line R. R	16,214,043	7,760,692	47.86	3,414,173	43.99	2,011,656	1,811,695	1,440.12
Oregon R. R. & Navigation Co	14,149,704	7,307,477	51.64	3,965,089	54.26	1,714,029	1,079,135	1,257.44
Total	74,764,289	40,479,515	54.14	19,591,051	48.40	9,420,565	8,291,396	5,973.75

[1] Figures cover operations for six months ending June 30, 1909; road "under control of construction department" prior thereto.
[2] Report for eleven months ending May 31, 1908; purchased by Union Pacific R. R.

UNION PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1907:								
Union Pacific R. R.	$45,512,934	$25,834,135	56.76	$13,062,819	.....	$6,197,818	$5,340,233	3,005.32
Leavenworth, Kansas & Western Ry	329,478	328,384	99.67	153,480	.....	142,564	21,539	191.96
Ilwaco R. R.[1]	38,069	37,530	98.58	17,269	.....	16,808	1,997	15.26
Oregon Short Line R. R.	17,196,119	7,352,329	42.76	3,518,748	.....	1,887,719	1,578,219	1,393.41
Oregon R. R. & Navigation Co.	12,939,461	6,966,466	53.84	3,692,371	.....	1,981,332	935,481	1,245.82
Total	76,016,061	40,518,844	53.30	20,444,687	50.46	10,226,241	7,877,469	5,851.77
Year ending June 30, 1906:								
Union Pacific R. R.	39,795,870	22,175,094	55.72	10,222,627	.....	6,353,215	4,614,339	2,955.45
Leavenworth, Kansas & Western Ry	331,651	311,801	94.02	148,718	.....	129,035	23,863	191.96
Columbia Southern Ry.	179,485	89,273	49.73	44,847	.....	20,303	12,331	69.93
Oregon Short Line R. R.	14,564,036	6,426,865	44.13	2,722,203	.....	1,915,324	1,467,131	1,112.15
Malad Valley R. R.	35,121	30,518	86.90	14,669	.....	11,116	3,224	14.57
Minidoka & Southwestern R. R.[2]	150,763	66,106	43.85	40,007	.....	11,407	10,865	47.61
Oregon R. R. & Navigation Co.	11,914,220	5,841,870	49.03	3,079,471	.....	1,492,274	990,996	1,130.58
Columbia River & Oregon Central R. R.	82,664	42,276	51.14	29,561	.....	5,469	4,122	45.31
St. Anthony R. R.	194,442	136,723	70.32	46,992	.....	75,779	9,929	37.46
Salmon River R. R.	86,968	40,250	46.28	21,004	.....	10,931	6,359	85.99
Wyoming Western R. R.	130,102	99,110	76.18	49,911	.....	30,358	15,980	19.02
Yellowstone Park R. R.[3]	1,046	967	92.47	326	.....	5	117	.72
Total	67,466,368	35,260,853	52.26	16,420,336	46.57	10,055,216	7,159,256	5,710.75

[1] Figures include operations of Ilwaco Ry. & Nav. Co. for period, July 1, 1906 to June 15, 1907, and of Ilwaco R. R. for period June 16 to 30, 1907.
[2] Report for period, June 15 to 30, 1906.
[3] Figures cover operations for period Sept. 10, 1905 to June 30, 1906.

UNION PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1905:								
Union Pacific R. R.	$35,175,125	$19,009,731	54.04	$8,800,030	.....	$4,480,698	$4,885,000	2,955.62
Leavenworth, Kansas & Western Ry.	290,800	310,938	106.93	146,865	.....	127,269	26,467	191.96
Oregon Short Line R. R.	13,010,451	5,660,173	43.50	2,472,914	.....	1,481,289	1,180,474	1,108.97
Malad Valley R. R.	16,523	14,965	90.57	8,695	.....	4,194	1,168	14.57
Oregon R. R. & Navigation Co.	10,225,152	4,928,535	48.20	2,548,931	.....	1,339,190	790,680	1,135.91
St. Anthony R. R.	148,309	65,971	44.46	37,293	.....	13,070	9,467	37.46
Salmon River R. R.	69,277	39,214	56.61	19,729	.....	9,300	6,308	85.99
Wyoming Western R. R.	111,949	68,445	61.14	33,536	.....	14,163	10,577	19.02
Total.	59,047,646	30,097,972	50.97	14,073,993	46.76	7,469,173	6,910,141	5,549.50
Year ending June 30, 1904:								
Union Pacific R. R.	33,239,209	18,598,906	55.95	9,241,781	.....	4,115,496	4,488,840	2,955.70
Leavenworth, Kansas & Western Ry.	344,796	337,951	98.01	167,404	.....	133,238	27,312	191.96
Oregon R. R. & Navigation Co.	8,974,663	4,225,616	47.08	2,327,097	.....	1,053,075	592,752	1,123.32
Oregon Short Line R. R.	11,690,504	4,945,321	42.30	2,302,165	.....	1,285,106	1,004,133	1,114.18
Malad Valley R. R.	13,100	12,246	93.48	7,102	.....	3,264	978	14.78
St. Anthony R. R.	144,132	59,701	41.42	33,497	.....	12,607	6,970	37.46
Salmon River R. R.	102,106	37,924	37.14	19,063	.....	11,227	4,861	86.01
Wyoming Western R. R.	93,195	70,506	75.65	39,083	.....	16,006	12,002	19.02
Total.	54,601,765	28,288,171	51.81	14,137,192	49.98	6,630,019	6,137,848	5,542.43

UNION PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1903:								
Union Pacific R. R.	$28,602,715	$17,114,103	59.83	$8,864,681	.....	$2,986,519	$4,559,439	2,949.09
Leavenworth, Kansas & Western Ry.	303,066	257,158	84.85	134,988	.....	90,831	23,078	191.96
Oregon R. R. & Navigation Co.	9,117,663	4,006,276	43.94	2,360,039	.....	903,218	494,549	1,122.59
Oregon Short Line R. R.	12,171,364	5,082,291	41.76	2,492,713	.....	1,349,149	946,993	1,430.97
New East Tintic Ry.	13,447	11,252	83.75	4,220	.....	6,516	502	1.99
St. Anthony R. R.	92,498	38,231	41.33	21,441	.....	11,572	3,499	40.11
Salmon River R. R.	63,922	27,123	42.43	14,905	.....	8,112	2,430	86.08
Utah & Pacific R. R.	63,965	43,693	68.31	21,233	.....	13,726	5,574	74.61
Utah, Nevada & California R. R.	16,217	20,474	126.26	10,864	.....	4,599	2,733	40.47
Wyoming Western R. R.	74,373	59,463	79.96	37,291	.....	10,065	9,921	19.02
Total.	50,519,230	26,660,074	52.77	13,962,435	52.37	5,384,307	6,048,718	5,956.89
Year ending June 30, 1902:								
Union Pacific R. R.	27,136,128	14,342,922	52.85	7,110,324	.....	3,409,605	3,173,731	2,995.00
Leavenworth, Kansas & Western Ry.	208,569	211,724	101.51	108,420	.....	81,230	13,715	191.98
Oregon R. R. & Navigation Co.	8,192,908	3,789,714	46.26	2,089,687	.....	985,956	515,428	1,109.75
Oregon Short Line R. R.	11,081,387	4,983,875	44.98	2,411,189	.....	1,494,587	856,898	1,438.94
New East Tintic Ry.	15,095	10,608	70.27	4,158	.....	5,925	486	1.99
St. Anthony R. R.	84,923	38,193	44.97	19,114	.....	13,687	3,858	37.46
Utah & Pacific R. R.	76,416	54,792	71.70	24,663	.....	18,724	8,349	74.22
Utah, Nevada & California R. R.	13,555	18,232	134.50	10,384	.....	4,063	2,037	40.42
Wyoming Western R. R.	56,013	53,674	95.82	23,267	.....	21,284	7,797	19.02
Total.	46,864,994	23,503,734	50.15	11,801,206	50.21	6,035,122	4,582,899	5,908.78

UNION PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1901:								
Union Pacific R. R	$25,472,600	$14,432,424	56.66	$7,362,491		$3,192,003	$3,203,329	3,010.85
Salina & Southwestern Ry.[1]	2,458	1,770	71.99	1,179		413	50	1.97
Salina & Southwestern Ry.[2]	9,193	7,005	76.20	4,258		2,176	176	6.90
Solomon R. R.[1]	6,348	4,388	69.12	2,191		1,867	103	3.16
Solomon R. R.[2]	27,591	26,080	94.52	8,057		16,213	1,161	11.07
Leavenworth, Kansas & Western Ry	238,775	228,418	95.66	123,571		83,949	13,155	191.96
Oregon R. R. & Navigation Co	7,544,150	3,687,806	48.88	2,029,744		980,219	476,470	1,093.59
Oregon Short Line R. R	9,673,280	4,382,526	45.31	2,184,395		1,233,530	784,068	1,439.00
New East Tintic Ry.[3]	13,925	7,295	52.39	3,387		1,437	2,407	1.16
St. Anthony R. R	66,328	33,080	49.87	16,897		11,817	2,991	37.46
Utah & Pacific R. R.[4]	26,394	17,019	64.48	8,597		4,146	3,373	18.55
Wyoming Western R. R.[5]	8,360	12,094	144.65	2,776		8,066	1,011	7.93
Total	43,089,402	22,839,905	53.01	11,747,543	51.43	5,535,836	4,488,294	5,823.60
Year ending June 30, 1900:								
Union Pacific R. R	23,046,907	12,539,367	54.41	6,901,589		2,156,860	2,913,806	2,923.45
Carbon Cut-Off Ry.[6]	18,121	18,033	99.51	10,612		6,536	524	8.49
Leavenworth, Kansas & Western Ry	256,535	252,541	98.44	129,083		99,715	16,778	191.96
Salina & Southwestern Ry	35,975	29,286	81.41	19,603		6,628	942	35.46
Solomon R. R	98,690	64,264	65.12	37,057		18,277	5,527	56.83
Echo & Park City Ry.[6]	29,217	24,298	83.16	12,322		8,255	2,831	13.79
Oregon R. R. & Navigation Co	6,686,399	3,025,612	45.25	1,679,184		763,693	403,495	1,066.04
Oregon Short Line R. R	8,578,397	3,823,738	44.57	1,882,688		1,074,857	685,415	1,438.40
Total	38,750,241	19,777,139	51.04	10,672,138	53.96	4,134,821	4,029,318	5,734.42

[1] Report for period, July 1 to 20, 1900.
[2] Report of receiver for period, July 21 to September 30, 1900. Merged in Union Pacific R. R.
[3] Report for period, December 3, 1900, to June 30, 1901.
[4] Report for three months ending June 30, 1901.
[5] Report for five months ending June 30, 1901.
[6] Report for six months ending December 31, 1899. Merged in Union Pacific R. R.

SOUTHERN PACIFIC SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909 [1]	$111,982,621	$67,473,785	60.25	$32,983,719	48.88
1908 [1]	114,444,025	76,323,361	66.69	37,862,879	49.61
1907	119,244,299	74,611,042	62.57	39,731,724	53.25
1906	101,808,329	64,597,786	63.45	30,572,714	47.33
1905	90,450,106	58,668,945	64.86	29,772,584	50.75
1904	86,904,265	58,039,595	66.79	31,959,556	55.07
1903	82,706,620	55,470,951	67.07	29,974,486	54.04
1902	78,728,398	50,681,719	64.38	27,870,980	54.99
1901	73,012,459	45,759,889	62.67	26,098,322	57.03
1900	63,338,506	40,672,449	64.21	23,430,417	57.61

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Southern Pacific Co.	$81,402,177	$45,879,952	56.36	$21,632,361	47.15	$10,015,328	$10,567,134	5,591.17
Galveston, Harrisburg & San Antonio Ry.	9,999,971	7,181,286	71.81	3,972,124	55.31	1,303,694	1,296,648	1,339.74
Hearne & Brazos Valley R. R.	28,595	19,848	69.42	9,403	47.37	6,289	2,564	19.74
Houston & Shreveport R. R.	205,575	120,439	58.59	73,551	61.07	35,149	4,038	39.78
Houston & Texas Central R. R.	5,911,353	4,452,790	75.33	2,306,989	51.81	802,935	908,905	789.01
Houston East & West Texas Ry.	1,219,630	785,977	64.44	395,765	50.36	220,617	114,473	190.94
Lake Charles & Northern R. R.[1]	44,138	34,427	78.00	19,522	56.71	9,569	4,241	44.48
Louisiana Western R. R.	1,938,706	1,084,983	55.96	525,046	48.39	179,583	240,526	198.28
Morgan's Louisiana & Texas R. R. & Steamship Co.	4,535,845	3,127,175	68.94	1,673,696	53.52	726,454	473,084	368.39
Iberia & Vermillion R. R.	60,755	38,176	62.84	19,797	51.86	14,068	1,434	21.00
Texas & New Orleans R. R.	3,538,835	2,772,123	78.33	1,449,274	52.28	635,029	515,074	451.35
Arizona & Colorado R. R.	53,409	30,075	56.31	15,431	51.31	12,210	415	35.35
Coos Bay, Roseburg & Eastern R. R. & Navigation Co.	157,076	113,950	72.54	40,130	35.22	42,014	23,407	31.46
Corvallis & Eastern R. R.	280,014	182,466	65.16	60,569	33.19	83,159	30,393	140.58
Gila Valley, Globe & Northern Ry.	1,013,599	647,935	63.92	245,235	37.85	272,343	103,538	125.41
Independence & Monmouth Ry.	22,307	13,877	62.21	9,236	66.56	1,874	1,612	18.80
Maricopa & Phoenix R. R.	315,602	143,555	45.49	63,155	43.99	39,194	30,657	45.64
Nevada & California Ry.	1,126,192	734,398	65.21	414,211	56.40	147,455	140,532	373.11
Phoenix & Eastern R. R.	128,842	110,353	85.65	58,224	52.76	32,959	9,403	95.26
Total.	111,982,621	67,473,785	60.25	32,983,719	48.88	14,579,923	14,468,078	9,919.49

[1] Report for period, October 25, 1908, to June 30, 1909.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1908:								
Southern Pacific Co.	$82,706,552	$52,565,202	63.56	$24,871,133	47.32	$13,178,748	$10,814,864	5,531.55
Galveston, Harrisburg & San Antonio Ry.	10,556,852	8,379,823	79.38	4,924,553	58.77	1,367,459	1,518,092	1,342.94
Hearne & Brazos Valley R. R.	22,586	22,119	97.93	9,979	45.11	8,442	1,938	19.74
Houston & Shreveport R. R.	180,740	125,183	69.26	72,007	57.52	27,912	15,602	39.78
Houston & Texas Central R. R.	5,764,081	4,398,012	76.30	2,379,826	54.11	798,720	837,473	789.01
Houston East & West Texas Ry.	1,178,249	865,888	73.49	437,896	50.57	239,158	133,526	190.94
Louisiana Western R. R.	2,085,879	1,216,675	58.33	645,172	53.03	224,745	225,658	198.28
Morgan's Louisiana & Texas R. R. & Steamship Co.	4,815,420	3,668,488	76.18	1,975,721	53.86	805,238	650,784	368.39
Iberia & Vermilion R. R.	71,620	56,148	78.40	25,405	45.25	20,072	6,750	21.00
Texas & New Orleans R. R.	3,731,027	2,987,799	80.08	1,585,762	53.07	566,759	681,740	449.21
Arizona & Colorado R. R.	31,593	25,693	81.56	9,235	35.93	13,685	875	17.14
Coos Bay, Roseburg & Eastern R. R. & Navigation Co.	153,954	133,732	86.87	43,804	32.75	53,972	29,047	31.01
Corvallis & Eastern R. R.	244,315	176,028	72.05	53,232	30.24	101,853	14,882	140.58
Gila Valley, Globe & Northern Ry.	1,035,208	546,077	52.75	219,910	40.27	209,917	86,006	125.15
Independence & Monmouth Ry.	22,126	20,388	92.15	14,732	72.26	1,711	2,010	18.80
Maricopa & Phoenix R. R.[1]	267,695	153,224	57.24	54,717	35.71	54,485	32,783	43.26
Nevada & California Ry.	1,432,997	860,896	60.08	483,745	56.20	169,976	162,644	330.48
Phoenix & Eastern R. R.	143,221	121,986	85.17	56,050	45.95	46,909	9,819	95.26
Total	114,444,025	76,323,361	66.69	37,862,879	49.61	17,889,761	15,224,493	9,752.52

[1] Understood to include operations of Maricopa & Phoenix and Salt River Valley R. R. for period, July 1 to 15, 1907.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1907:								
Southern Pacific Co	$82,414,294	$49,038,940	59.50	$25,462,861	.....	$10,747,671	$10,584,670	5,455.17
Galveston, Harrisburg & San Antonio Ry	11,742,470	9,007,650	76.71	5,431,585	.....	1,581,074	1,655,902	1,339.80
Hearne & Brazos Valley R. R	36,842	21,119	57.32	9,895	.....	6,143	2,494	18.68
Houston & Shreveport R. R	215,019	152,465	70.91	84,907	.....	47,653	12,690	39.78
Houston & Texas Central R. R	6,735,570	4,457,525	66.18	2,578,282	.....	856,001	778,070	789.01
Houston East and West Texas Ry	1,361,472	806,367	59.23	433,297	.....	224,509	104,334	190.94
Louisiana Western R. R	2,400,569	1,394,072	58.07	713,563	.....	278,291	312,924	198.26
Morgan's Louisiana & Texas R. R. & Steamship Co	5,315,999	4,000,690	75.26	2,110,663	.....	998,661	714,462	340.29
Iberia & Vermilion R. R	70,741	53,241	75.26	27,680	.....	15,534	6,699	21.00
Texas & New Orleans R. R	4,201,198	3,151,421	75.01	1,656,481	.....	757,010	623,782	438.62
California Northwestern Ry.[1]	102,870	56,134	54.58	29,331	.....	15,518	7,214	20.03
California Northwestern Ry. (Lessee)[1]	863,672	434,304	50.29	221,316	.....	116,825	62,907	88.87
Gila Valley, Globe & Northern Ry	1,045,332	635,352	60.78	286,460	.....	224,413	103,577	126.53
Independence & Monmouth Ry	19,421	16,406	84.48	12,598	.....	1,686	1,104	18.80
Maricopa & Phoenix & Salt River Valley R. R	220,954	237,077	107.30	80,306	.....	113,850	29,493	42.51
Nevada & California Ry	1,977,734	808,205	40.87	397,980	.....	237,341	133,818	322.23
North Shore R. R.[1]	472,172	310,578	65.78	174,549	.....	74,080	40,042	45.25
Phoenix & Eastern R. R.[2]	47,970	29,496	61.49	19,970	.....	5,548	2,718	27.78
Total	119,244,299	74,611,042	62.57	39,731,724	53.25	16,301,811	15,177,500	9,523.57

[1] Report for six months ending December 31, 1906; consolidated with certain other companies, forming Northwestern Pacific Ry.
[2] Report for period March 14 to June 30, 1907; formerly operated by Santa Fe, Prescott & Phoenix Ry.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1906:								
Southern Pacific Co.	$69,068,815	$41,947,648	60.73	$19,219,523	.....	$11,203,463	$9,980,002	5,407.67
Galveston, Harrisburg & San Antonio Ry.	9,529,123	6,532,242	68.55	3,428,017	.....	1,291,923	1,541,524	1,257.99
Galveston, Houston & Northern Ry.[1]	330,435	243,099	73.57	193,608	.....	18,967	25,610	14.02
Hearne & Brazos Valley R. R.	26,431	17,402	65.84	8,330	.....	5,015	1,343	18.68
Houston & Shreveport R. R.	154,796	138,253	89.31	73,634	.....	45,617	13,292	39.78
Houston & Texas Central R. R.	5,751,759	3,843,091	66.82	2,123,683	.....	844,982	658,606	694.78
Houston East & West Texas Ry.	1,319,548	815,016	61.76	357,359	.....	300,902	118,111	190.94
Louisiana Western R. R.	2,246,804	1,160,829	51.67	576,901	.....	201,933	309,752	198.28
Gulf, Western Texas & Pacific Ry.[2]	18,002	19,733	109.62	7,837	.....	6,659	4,032	12.05
Morgan's Louisiana & Texas R. R. & Steamship Co.	5,050,845	3,395,390	67.22	1,662,851	.....	817,707	769,249	338.72
Iberia & Vermilion R. R.	73,085	51,528	70.50	24,644	.....	14,192	10,409	21.00
New York, Texas & Mexican Ry.[2]	37,481	40,077	106.93	14,562	.....	17,610	5,886	19.15
Texas & New Orleans R. R.	3,469,118	3,008,938	86.73	1,386,997	.....	895,612	630,194	438.62
California Northwestern Ry.	173,984	119,323	68.58	56,235	.....	45,637	9,470	40.06
California Northwestern Ry. (Lessee)	1,433,656	881,780	61.51	450,625	.....	250,318	128,132	177.74
Gila Valley, Globe & Northern Ry.	903,356	677,309	74.98	265,885	.....	334,147	56,447	126.53
Independence & Monmouth Ry.	15,111	12,254	81.09	9,196	.....	1,097	1,043	18.50
Maricopa & Phoenix & Salt River Valley R. R.	173,911	292,489	168.18	75,780	.....	168,751	39,171	41.96
Nevada & California Ry.	1,290,222	842,658	65.31	345,056	.....	333,623	136,761	311.15
North Shore R. R.	741,847	558,727	75.32	311,931	.....	115,248	94,931	90.50
Total.	101,808,329	64,597,786	63.45	30,572,714	47.33	16,913,403	14,533,915	9,458.12

[1] Report for period, July 1 to September 28, 1905; merged in Galveston, Harrisburg & San Antonio Ry.
[2] Report for period, July 1 to August 9, 1905; merged in Galveston Harrisburg & San Antonio Ry.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1905:								
Southern Pacific Co.	$62,150,536	$38,197,478	61.46	$18,743,224	.....	$9,208,432	$9,003,086	5,410.17
Galveston, Harrisburg & San Antonio Ry.	7,127,212	5,572,417	78.19	2,999,461	.....	994,892	1,352,510	916.18
Galveston, Houston & Northern Ry.	1,211,937	963,104	79.47	671,203	.....	141,473	132,420	57.44
Houston & Shreveport R. R.	184,238	142,661	77.43	87,604	.....	29,125	19,505	39.78
Houston & Texas Central R. R.	5,222,193	3,900,343	74.68	2,080,619	.....	525,944	685,069	690.03
Houston, East & West Texas Ry.	1,089,623	686,486	63.00	377,532	.....	170,935	100,908	190.96
Louisiana Western R. R.	2,194,347	1,181,344	53.84	592,490	.....	262,170	261,296	198.28
Morgan's Louisiana & Texas R. R. & Steamship Co.	5,322,551	3,241,806	60.91	1,802,159	.....	720,885	593,844	336.64
Gulf, Western Texas & Pacific Ry.	142,780	172,067	120.51	72,165	.....	61,374	28,582	111.42
Iberia & Vermilion R. R.	85,101	34,294	40.30	22,706	.....	9,822	1,550	21.00
New York, Texas & Mexican Ry.	484,101	384,827	79.49	174,343	.....	132,982	55,690	176.71
Texas & New Orleans R. R.	3,388,549	2,889,684	85.27	1,526,742	.....	722,082	541,706	437.78
Carson & Colorado Ry.[1]	772,647	487,105	63.04	279,815	.....	73,962	114,097	249.68
Gila Valley, Globe & Northern Ry.	686,026	503,764	73.43	183,512	.....	264,836	37,193	125.75
Maricopa & Phoenix & Salt River Valley R. R.	134,753	158,194	117.39	58,606	.....	65,477	21,055	42.49
Nevada & California Ry.[2]	253,512	153,371	60.49	100,403	.....	16,731	30,848	48.94
Total	90,450,106	58,668,945	64.86	29,772,584	50.75	13,801,133	12,979,359	9,053.25

[1] Report for ten months ending April 30, 1905; reorganized as Nevada & California Ry.
[2] Report for two months ending June 30, 1905.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1904:								
Southern Pacific Co.	$60,649,575	$38,313,322	63.17	$20,197,116	.....	$8,602,359	$8,385,233	5,274.22
Galveston, Harrisburg & San Antonio Ry.	7,123,535	6,052,492	84.96	3,586,547	.....	1,019,206	1,243,057	917.00
Galveston, Houston & Northern Ry.	1,224,890	947,088	77.32	745,146	.....	102,888	81,811	57.90
Houston & Shreveport R. R.	196,722	145,200	73.81	86,000	.....	31,206	21,561	39.78
Houston & Texas Central R. R.	5,200,072	4,064,011	78.15	2,470,047	.....	697,289	698,575	660.03
Houston East & West Texas Ry.	824,344	717,331	87.02	389,382	.....	191,995	103,246	190.96
Louisiana Western R. R.	1,873,707	1,141,688	60.93	564,364	.....	278,292	243,786	188.59
Morgan's Louisiana & Texas R. R. & Steamship Co.	4,485,798	2,554,071	56.94	1,593,377	.....	394,892	460,575	326.33
Gulf, Western Texas & Pacific Ry.	152,756	209,843	137.37	81,811	.....	95,235	24,873	111.42
Iberia & Vermillion R. R.	77,492	32,329	41.72	20,978	.....	9,919	1,221	21.49
New York, Texas & Mexican Ry.	454,826	366,918	80.67	192,304	.....	90,977	63,781	176.71
Texas & New Orleans R. R.	3,624,881	2,922,805	80.63	1,752,520	.....	465,166	613,972	437.49
Carson & Colorado Ry.	415,828	245,887	59.14	139,914	.....	56,077	36,820	299.62
Gila Valley, Globe & Northern Ry.	454,097	197,059	43.40	94,143	.....	57,861	27,014	126.53
Maricopa & Phoenix & Salt River Valley R. R.	145,742	129,551	88.88	45,907	.....	57,669	9,725	42.49
Total	86,904,265	58,039,395	66.79	31,959,556	55.07	12,151,031	12,015,250	8,900.56

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1903:								
Southern Pacific Co.	$57,097,606	$35,901,804	62.88	$18,722,293	.....	$8,596,841	$7,465,821	5,249.82
Galveston, Harrisburg & San Antonio Ry.	6,850,862	6,290,527	91.82	3,749,801	.....	1,374,456	977,863	917.00
Galveston, Houston & Northern Ry.	1,189,343	794,919	66.84	627,915	.....	99,222	53,893	57.90
Houston & Shreveport R. R.	229,587	180,043	78.42	109,570	.....	48,361	13,940	40.00
Houston & Texas Central R. R.	5,285,894	3,998,728	75.65	2,266,627	.....	835,734	723,592	680.09
Houston East & West Texas Ry.	897,137	883,189	98.45	422,930	.....	332,750	89,071	190.94
Louisiana Western R. R.	1,886,413	1,210,313	64.16	542,721	.....	370,852	243,669	164.27
Morgan's Louisiana & Texas R. R. & Steamship Co.	4,625,678	2,605,102	56.32	1,601,424	.....	424,976	475,307	323.77
Gulf, Western Texas & Pacific Ry.	163,010	161,895	99.32	71,385	.....	62,909	21,134	111.20
Iberia & Vermilion R. R.	72,290	32,012	44.28	20,812	.....	10,750	265	21.49
New York, Texas & Mexican Ry.	469,484	380,884	81.13	164,753	.....	149,571	53,668	135.27
Texas & New Orleans R. R.	3,157,685	2,717,258	86.05	1,500,175	.....	547,377	596,349	400.12
Carson & Colorado Ry.	466,205	181,085	38.84	105,146	.....	45,202	30,704	299.62
Gila Valley, Globe & Northern Ry.	315,426	133,192	42.22	68,934	.....	27,543	20,196	126.53
Total	82,706,620	55,470,951	67.07	29,974,486	54.04	12,926,544	10,765,472	8,718.02

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1902:								
Southern Pacific Co.	$57,077,686	$34,633,652	60.68	$18,750,444	.....	$8,135,281	$6,604,314	5,474.61
Galveston, Harrisburg & San Antonio Ry.	7,147,824	5,827,540	81.53	3,630,796	.....	1,183,949	870,798	917.00
Galveston, Houston & Northern Ry.	408,441	437,413	107.09	305,229	.....	90,177	30,987	60.92
Houston & Shreveport R. R.	223,161	156,405	70.09	93,034	.....	32,806	23,333	40.00
Houston & Texas Central R. R.	5,156,171	3,617,880	70.16	1,936,008	.....	930,490	581,824	656.96
Houston East & West Texas Ry.	901,420	712,761	79.06	348,198	.....	190,019	131,320	191.00
Louisiana Western R. R.[1]	1,019,490	568,003	55.71	299,023	.....	129,860	116,560	74.27
Morgan's Louisiana & Texas R. R. & Steamship Co.[1]	2,494,666	1,540,242	61.74	932,014	.....	229,688	328,563	161.89
Gulf, Western Texas & Pacific Ry.	158,794	150,128	94.56	64,087	.....	57,024	22,333	111.20
Iberia & Vermilion R. R.	69,569	27,159	39.04	19,208	.....	6,771	945	21.49
New York, Texas & Mexican Ry.	383,360	234,504	61.17	116,730	.....	69,510	37,378	122.41
Texas & New Orleans R. R.	2,970,724	2,477,935	83.41	1,225,667	.....	801,411	386,318	400.74
Carson & Colorado Ry.	348,712	123,379	35.38	69,711	.....	37,687	15,558	299.62
Gila Valley, Globe & Northern Ry.	368,380	174,718	47.43	80,831	.....	57,003	21,002	126.53
Total.	78,728,398	50,681,719	64.38	27,870,980	54.99	11,951,676	9,171,233	8,658.64

[1] Report for six months ending June 30, 1902; operations for first six months of year covered by returns for Southern Pacific Co.

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1901:								
Southern Pacific Co	$55,376,299	$33,255,833	60.05	$18,644,743	.....	$7,154,925	$5,974,522	5,657.49
Austin & Northwestern R. R	260,281	169,151	64.99	89,268	.....	49,957	21,736	107.86
Central Texas & Northwestern Ry	143,437	69,315	48.32	39,103	.....	14,434	10,778	12.57
Fort Worth & New Orleans Ry	343,782	254,596	74.06	161,809	.....	55,657	25,725	41.97
Galveston, Harrisburg & San Antonio Ry	6,774,709	5,417,118	79.96	3,482,908	.....	1,119,529	676,001	917.00
Galveston, Houston & Northern Ry	388,801	585,914	150.70	297,543	.....	242,119	30,161	60.63
Gulf, Western Texas & Pacific Ry	130,542	117,674	90.14	53,283	.....	40,181	19,429	111.20
Houston & Shreveport R. R	188,286	118,458	62.92	74,648	.....	26,642	10,862	40.00
Houston & Texas Central R. R	4,958,993	2,954,667	59.58	1,723,162	.....	591,881	467,832	507.75
Houston East & West Texas Ry	847,113	601,633	71.02	298,508	.....	195,979	68,510	191.00
Iberia & Vermilion R. R	44,720	22,334	49.94	16,065	.....	5,140	900	21.49
New York, Texas & Mexican Ry	288,245	206,304	71.57	96,083	.....	63,842	35,351	122.41
Texas & New Orleans R. R	2,726,806	1,718,822	63.03	977,961	.....	369,035	322,132	328.78
Carson & Colorado Ry	180,697	97,620	54.20	53,471	.....	31,713	12,245	299.62
Gila Valley, Globe & Northern Ry	360,348	170,450	47.30	89,967	.....	41,729	22,286	126.50
	73,012,459	45,759,889	62.67	26,098,322	57.03	10,002,763	7,698,470	8,546.27

SOUTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1900:								
Southern Pacific Co	$50,129,567	$30,554,515	60.95	$17,572,543	.....	$6,378,591	$5,424,775	5,596.29
Austin & Northwestern R. R	165,089	162,504	98.43	81,106	.....	49,360	23,208	107.86
Central Texas & Northwestern Ry	117,183	64,127	54.72	31,160	.....	15,015	14,096	12.57
Fort Worth & New Orleans Ry	283,623	189,775	66.91	119,895	.....	42,746	17,100	41.97
Galveston, Harrisburg & San Antonio Ry	6,161,819	5,008,415	81.28	3,071,068	.....	1,047,750	764,299	918.16
Galveston, Houston & Northern Ry	213,723	270,225	126.43	161,417	.....	78,737	19,009	60.15
Gulf, Western Texas & Pacific Ry	124,050	131,190	105.76	53,535	.....	59,087	13,877	111.20
Houston & Texas Central R. R	3,826,335	2,733,977	71.45	1,501,487	.....	609,388	473,341	507.75
Iberia & Vermilion R. R	38,439	22,541	58.64	15,100	.....	6,614	723	21.43
New York, Texas & Mexican Ry	296,030	173,876	58.74	86,748	.....	54,880	22,019	91.00
Texas & New Orleans R. R	1,813,904	1,244,589	68.61	672,685	.....	307,611	222,558	276.07
Carson & Colorado Ry	168,744	116,724	69.17	63,673	.....	29,450	22,056	299.62
	63,338,506	40,672,449	64.21	23,430,417	57.61	8,679,229	7,017,061	8,044.07

NORTHERN PACIFIC SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909[1]	$69,152,244	$38,488,688	55.66	$20,525,830	53.33
1908[1]	68,977,631	40,352,183	58.50	20,974,432	51.98
1907	69,596,991	38,238,889	54.94	22,168,124	57.97
1906	62,231,783	31,678,802	50.90	16,851,571	53.20
1905	51,816,604	27,521,115	53.11	13,690,343	49.74
1904	47,635,456	24,955,206	52.39	12,913,662	51.75
1903	47,457,525	24,974,695	52.63	12,634,446	50.59
1902	42,313,782	21,869,125	51.68	10,422,109	47.66
1901	33,398,255	17,116,708	51.25	8,323,261	48.63
1900	32,320,644	15,877,406	49.12	7,266,029	45.77

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

NORTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Northern Pacific Ry	$68,460,747	$38,020,005	55.54	$20,305,621	53.41	$7,847,050	$7,845,689	5,671.29
Big Fork & International Falls Ry	37,854	38,191	100.89	22,660	59.33	11,238	1,330	34.19
Minnesota & International Ry	603,552	396,871	65.75	184,341	46.45	115,196	71,835	194.44
North Yakima & Valley Ry	36,156	[1]		[1]		[1]	[1]	
Port Townsend Southern R. R	50,091	33,621	67.12	13,208	39.28	13,491	5,120	41.20
Total	[2] 69,152,244	38,488,688	55.66	20,525,830	53.33	7,986,975	7,923,974	5,941.12
Year ending June 30, 1908:								
Northern Pacific Ry	68,235,484	39,865,033	58.42	20,743,429	52.03	8,984,356	8,436,767	5,633.33
Big Fork & International Falls Ry.[3]	14,300	24,805	173.46	14,010	56.48	5,878	3,162	34.11
Minnesota & International Ry	678,717	424,528	62.55	202,925	47.80	118,579	77,491	195.57
Port Townsend Southern R. R	49,130	37,817	76.97	14,068	37.20	17,839	4,422	41.20
Total	68,977,631	40,352,183	58.50	20,974,432	51.98	9,126,652	8,521,842	5,904.21
Year ending June 30, 1907:								
Northern Pacific Ry	68,447,454	37,601,938	54.94	21,810,916	.....	9,069,536	5,651,129	5,443.67
Minnesota & International Ry	646,128	370,974	57.41	214,362	.....	101,956	33,643	191.94
Port Townsend Southern R. R	52,694	42,578	80.80	15,914	.....	23,082	1,649	41.20
Washington & Columbia River Ry	450,715	223,399	49.57	126,932	.....	65,755	17,806	168.86
Total	69,596,991	38,238,889	54.94	22,168,124	57.97	9,260,329	5,704,227	5,845.67

[1] Figures as returned have been questioned.
[2] Excludes returns for North Yakima & Valley Ry., see Note 1.
[3] Report received too late for inclusion in "Statistics of Railways in the United States."

NORTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1906:								
Northern Pacific Ry	$61,132,655	$31,029,612	50.76	$16,552,093	.....	$7,430,193	$6,029,074	5,401.14
Minnesota & International Ry	622,289	381,978	61.38	176,045	.....	125,803	60,825	176.55
Port Townsend Southern R. R	43,468	60,264	138.64	13,991	.....	41,477	2,934	41.20
Washington & Columbia River Ry	433,371	206,948	47.75	109,442	.....	62,747	18,781	168.86
Total	62,231,783	31,678,802	50.90	16,851,571	53.20	7,660,220	6,111,614	5,787.75
Year ending June 30, 1905:								
Northern Pacific Ry	50,771,071	26,881,944	52.95	13,426,924	.....	7,240,124	5,178,870	5,314.95
Minnesota & International Ry	494,713	333,690	67.45	139,331	.....	134,216	40,790	159.59
Port Townsend Southern R. R	32,844	40,956	124.70	10,656	.....	26,296	1,199	41.20
Washington & Columbia River Ry	517,976	264,525	51.07	113,432	.....	90,967	44,160	162.73
Total	51,816,604	27,521,115	53.11	13,690,343	49.74	7,491,603	5,265,019	5,678.47
Year ending June 30, 1904:								
Northern Pacific Ry	46,640,297	24,375,265	52.26	12,618,095	.....	6,554,814	4,223,754	5,262.16
Minnesota & International Ry	585,681	332,385	56.75	183,821	.....	97,680	31,387	166.67
Port Townsend Southern R. R	30,798	38,387	124.64	10,406	.....	23,800	1,411	41.20
Washington & Columbia River Ry	378,680	209,169	55.24	101,340	.....	75,118	17,522	162.73
Total	47,635,456	24,955,206	52.39	12,913,662	51.75	6,751,412	4,274,074	5,632.76

NORTHERN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1903:								
Northern Pacific Ry	$46,161,150	$24,076,138	52.16	$12,172,890	.....	$7,037,164	$3,991,472	5,111.58
Minnesota & International Ry	658,688	465,669	70.70	267,128	.....	138,122	36,334	132.68
Port Townsend Southern R. R.[1]	20,603	18,810	91.30	6,084	.....	11,348	903	24.03
Washington & Columbia River Ry	457,558	248,583	54.33	125,816	.....	89,622	17,065	102.73
Bellingham Bay & Eastern R. R.[2]	52,774	54,064	102.44	16,818	.....	33,837	1,971	16.86
Monte Cristo Ry	106,752	111,431	104.38	45,710	.....	52,509	9,051	65.11
Total	47,457,525	24,974,695	52.63	12,634,446	50.59	7,362,602	4,056,796	5,512.99
Year ending June 30, 1902:								
Northern Pacific Ry	41,361,187	21,287,221	51.47	10,138,624	.....	6,767,757	3,404,995	5,019.36
Minnesota & International Ry	467,027	342,243	73.28	188,812	.....	95,900	35,951	109.80
Washington & Columbia River Ry	485,568	239,661	49.36	94,673	.....	113,329	15,867	162.73
Total	42,313,782	21,869,125	51.68	10,422,109	47.66	6,976,986	3,456,813	5,291.89
Year ending June 30, 1901:								
Northern Pacific Ry	32,548,712	16,627,872	51.09	8,049,445	.....	5,249,068	2,455,823	5,100.14
Washington & Columbia River Ry	417,177	201,143	48.22	94,043	.....	78,033	15,304	162.73
Brainerd & Northern Minnesota Ry	432,366	287,693	66.54	179,773	.....	60,202	24,910	92.40
Total	33,398,255	17,116,708	51.25	8,323,261	48.63	5,387,303	2,496,037	5,355.27
Year ending June 30, 1900:								
Northern Pacific Ry	30,001,037	14,374,347	47.92	6,494,209	.....	4,874,087	2,232,400	4,714.19
Washington & Columbia River Ry	359,259	182,846	50.90	76,606	.....	76,758	16,416	162.73
St. Paul & Duluth R. R	1,960,348	1,320,213	67.35	695,814	.....	325,728	207,396	246.24
Total	32,320,644	15,877,406	49.12	7,266,629	45.77	5,276,573	2,456,212	5,123.16

[1] Figures from report for seven months ending June 30, 1903.
[2] Figures from report for period, October 11, 1902, to June 30, 1903.

ATCHISON, TOPEKA & SANTA FE SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909[1]	$94,735,587	$57,832,417	61.05	$26,855,191	46.44
1908[1]	91,075,629	61,195,109	67.19	28,689,724	46.88
1907	94,753,377	59,981,996	63.30	30,379,769	50.65
1906	81,785,054	51,143,354	62.53	24,922,031	48.73
1905	71,288,925	47,802,654	67.05	22,691,058	47.47
1904	71,241,655	44,600,380	62.60	22,804,284	51.13
1903	65,137,373	40,588,944	62.31	20,404,188	50.27
1902	61,488,704	35,796,188	58.22	19,662,771	54.93
1901	55,426,342	33,391,169	60.24	18,176,438	54.43
1900	47,082,308	28,484,472	60.50	15,518,917	54.48

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Atchison, Topeka & Santa Fe Ry	$76,770,668	$45,381,887	59.11	$20,698,630	45.61	$10,070,282	$11,427,226	7,460.51
Southern Kansas Ry. Co. of Texas	1,225,529	795,883	64.94	410,008	51.51	165,299	175,161	125.07
Eastern Ry. Co. of New Mexico	1,028,119	591,280	57.51	286,476	48.45	148,019	117,524	227.29
Pecos & Northern Texas Ry	1,289,177	730,475	56.66	386,685	52.94	166,448	130,797	152.14
Pecos River R. R	53,170	61,717	116.07	25,150	40.75	27,677	5,259	54.27
Gulf, Colorado & Santa Fe Ry	12,552,900	9,213,630	73.40	4,554,028	49.43	2,093,214	1,947,734	1,518.18
Texas & Gulf Ry	202,599	129,109	63.75	53,801	41.65	47,233	15,130	74.18
Arizona & California Ry	43,808	27,077	61.81	15,071	55.66	6,973	3,789	106.84
Grand Canyon Ry	184,962	149,396	80.77	87,341	58.46	48,862	4,758	66.89
Santa Fe, Prescott & Phoenix Ry	1,346,153	720,323	53.51	313,887	43.58	213,468	100,196	257.40
Beaumont Wharf & Terminal Co	38,502	31,580	82.02	24,114	76.36	3,827	3,627	2.75
Total	94,735,587	57,832,417	61.05	26,855,191	46.44	12,991,302	13,931,201	10,045.52
Year ending June 30, 1908:								
Atchison, Topeka & Santa Fe Ry	75,574,382	48,100,629	63.65	22,132,246	46.01	11,297,835	11,868,811	7,100.66
Southern Kansas Ry. Co. of Texas	861,728	1,126,983	130.78	379,173	33.65	579,646	140,432	128.15
Eastern Ry. Co. of New Mexico	889,477	563,798	63.39	244,243	43.32	180,454	98,659	221.47
Pecos & Northern Texas Ry	810,453	645,991	79.71	290,989	45.05	222,512	100,802	152.14
Pecos River R. R	40,321	59,103	146.58	21,615	36.57	29,935	5,166	54.27
Gulf, Colorado & Santa Fe Ry	11,001,953	9,474,546	86.12	5,083,265	53.65	1,782,779	2,048,248	1,500.99
Texas & Gulf Ry	237,255	178,635	75.29	81,526	45.64	56,396	26,519	72.43
Grand Canyon Ry	186,575	164,642	88.24	96,856	58.83	49,419	11,779	66.89
Santa Fe, Prescott & Phoenix Ry	1,439,482	852,913	59.25	335,505	39.34	321,715	114,218	257.33
Beaumont Wharf & Terminal Co	34,003	27,869	81.96	24,306	87.22	1,622	1,847	3.96
Total	91,075,629	61,195,109	67.19	28,689,724	46.88	14,522,313	14,416,481	9,558.29

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1907:								
Atchison, Topeka & Santa Fe Ry	$76,639,368	$47,161,987	61.54	$23,404,855		$12,234,787	$9,752,564	6,909.03
Southern Kansas Ry. Co. of Texas	723,598	631,910	87.33	413,197		162,997	37,048	129.17
Pecos & Northern Texas Ry	743,571	655,064	88.10	284,813		325,655	27,914	115.67
Pecos River R. R	48,008	44,702	93.11	23,491		17,517	2,094	54.27
Gulf, Colorado & Santa Fe Ry	12,955,680	9,455,488	72.98	5,301,542		2,070,268	1,743,035	1,486.06
Texas & Gulf Ry	231,082	157,996	68.37	73,496		60,412	16,520	72.43
Grand Canyon Ry	163,104	247,229	151.58	120,307		108,022	14,390	66.89
Santa Fe, Prescott & Phoenix Ry	1,637,146	742,827	45.37	335,890		252,128	91,861	257.32
Denver, Enid & Gulf R. R	301,992	239,449	79.29	117,445		64,479	39,428	117.48
Beaumont Wharf & Terminal Co	32,620	26,577	81.47	22,967		719	2,766	4.10
Pecos Valley & Northeastern Ry	1,054,996	516,590	48.97	237,848		158,231	85,904	221.47
Fort Bragg & Southeastern R. R	15,353	15,541	101.23	4,285		10,224	858	11.93
San Francisco & Northwestern Ry.[1]	206,859	86,636	41.88	39,633		32,113	6,388	26.81
Total	94,753,377	59,981,996	63.30	30,379,769	50.65	15,497,552	11,820,770	9,472.63

[1] Figures from report for six months ending December 31, 1906; consolidated with certain other roads, forming Northwestern Pacific R. R.

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1906:								
Atchison, Topeka & Santa Fe Ry	$47,758,906	$29,568,705	61.91	$14,487,194	.....	$7,704,387	$6,298,224	5,043.30
Southern Kansas Ry. Co. of Texas	522,242	427,694	81.90	237,685	.....	142,106	32,472	129.17
Pecos & Northern Texas Ry	426,694	252,047	59.07	159,579	.....	52,774	24,707	94.50
Pecos River R. R	38,421	39,158	101.92	19,298	.....	15,121	2,460	54.27
Gulf, Colorado & Santa Fe Ry	10,048,046	7,982,532	79.44	3,988,027	.....	2,081,219	1,599,484	1,433.86
Texas & Gulf Ry	163,831	136,029	83.03	67,844	.....	50,520	7,373	70.70
Grand Canyon Ry	152,324	225,834	148.26	112,201	.....	88,723	18,932	66.89
Santa Fe, Prescott & Phoenix Ry	1,406,052	666,409	47.40	272,564	.....	256,492	82,294	256.94
Denver, Enid & Gulf R. R	164,670	166,416	101.06	93,499	.....	38,079	24,985	91.99
Beaumont Wharf & Terminal Co	30,913	24,791	80.20	19,072	.....	3,131	1,897	4.10
Pecos Valley & Northeastern Ry	721,975	386,983	53.60	177,043	.....	111,714	77,547	221.47
Fort Bragg & Southeastern R. R	28,094	35,846	127.59	8,657	.....	24,594	2,133	23.85
San Francisco & Northwestern Ry	271,159	144,692	53.36	57,279	.....	58,646	11,300	53.62
Arizona & Utah Ry.[1]	6,229	11,344	182.12	8,136	.....	1,272	1,684	14.13
Atchison, Topeka & Santa Fe Ry. Coast Lines	20,045,498	11,074,874	55.25	5,213,953	.....	2,547,695	2,789,860	1,840.35
Total	81,785,054	51,143,354	62.53	24,922,031	48.73	13,176,473	10,975,352	9,399.14

[1] Figures from report for period July 1, 1905, to January 10, 1906; reorganized as Western Arizona Ry.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1905:								
Atchison, Topeka & Santa Fe Ry	$41,492,969	$26,993,256	65.06	$12,708,032	.....	$7,376,533	$5,805,953	5,033.79
Southern Kansas Ry. Co. of Texas	358,544	359,002	100.12	188,400	.....	127,491	28,672	129.17
Pecos & Northern Texas Ry	311,753	186,953	59.97	120,952	.....	31,226	22,253	94.50
Pecos River R. R	38,086	49,267	129.36	24,191	.....	20,028	3,454	54.27
Gulf, Colorado & Santa Fe Ry	8,875,092	7,075,613	79.72	3,805,277	.....	1,430,727	1,555,009	1,328.74
Grand Canyon Ry	104,036	129,960	124.92	65,742	.....	54,401	6,073	66.89
Santa Fe, Prescott & Phoenix Ry	1,165,403	676,555	58.05	279,224	.....	242,884	91,211	344.28
Beaumont Wharf & Terminal Co	30,029	24,389	81.22	15,576	.....	6,430	1,383	3.78
Pecos Valley & Northeastern Ry	543,778	312,829	57.53	152,718	.....	86,058	55,308	221.47
San Francisco & Northwestern Ry	254,957	193,093	75.74	61,659	.....	101,562	12,289	51.83
Atchison, Topeka & Santa Fe Ry.—Coast Lines	17,889,868	11,624,361	64.98	5,195,998	.....	2,450,068	3,525,171	1,826.39
Cane Belt R. R	223,810	177,376	79.25	73,289	.....	61,619	25,701	105.17
Total	71,288,925	47,802,654	67.05	22,691,058	47.47	11,989,627	11,132,597	9,260.28

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1904:								
Atchison, Topeka & Santa Fe Ry	$41,845,337	$25,127,386	60.05	$12,883,836	.....	$5,981,747	$5,253,598	4,974.86
Southern Kansas Ry. Co. of Texas	373,184	286,383	76.74	183,330	.....	72,630	18,639	129.17
Pecos & Northern Texas Ry	294,610	209,668	71.17	139,628	.....	31,458	25,344	94.50
Pecos River R. R	38,469	47,677	123.94	24,800	.....	18,600	2,283	54.27
Gulf, Colorado & Santa Fe Ry	8,386,732	6,604,201	78.75	3,469,694	.....	1,282,576	1,571,626	1,273.15
Grand Canyon Ry	115,648	61,480	53.16	39,148	.....	19,248	815	66.89
Santa Fe, Prescott & Phoenix Ry	1,203,671	584,840	48.59	297,872	.....	160,898	71,991	278.62
Beaumont Wharf & Terminal Co	60,827	37,283	61.29	30,038	.....	4,531	714	3.70
Pecos Valley & Northeastern Ry	470,341	280,611	59.66	142,378	.....	75,995	48,515	221.47
San Francisco & Northwestern Ry	254,146	151,335	59.55	60,138	.....	61,731	12,263	51.03
Atchison, Topeka & Santa Fe Ry.—Coast Lines	13,470,847	8,537,460	63.38	4,140,571	.....	1,402,735	2,630,682	1,376.87
Cane Belt R. R	207,777	198,809	95.68	102,258	.....	64,655	15,240	104.39
Gulf, Beaumont & Kansas City Ry.[1]	249,783	244,434	97.86	109,792	.....	49,366	70,534	50.26
Southern California Ry.[2]	4,270,283	2,228,813	52.19	1,180,741	.....	430,547	531,591	438.23
Total	71,241,655	44,600,380	62.60	22,804,284	51.13	9,656,717	10,253,835	9,117.41

[1] Figures from report for five months ending November 30, 1903; leased to Gulf, Colorado & Santa Fe Ry.
[2] Figures from report for eleven months ending May 31, 1904; leased to Atchison, Top. & S. F. Ry.

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1903:								
Atchison, Topeka & Santa Fe Ry	$38,522,758	$22,417,054	58.19	$11,268,678	.....	$5,472,887	$4,783,797	4,857.58
Southern Kansas Ry. Co. of Texas	364,702	314,367	86.19	182,822	.....	98,004	21,805	129.17
Pecos & Northern Texas Ry	345,115	214,341	62.10	129,866	.....	38,075	34,969	94.50
Pecos River R. R	47,254	46,567	98.55	23,983	.....	18,102	3,196	54.27
Gulf, Colorado & Santa Fe Ry	8,057,064	6,640,647	82.42	3,162,958	.....	1,808,536	1,398,218	1,202.18
Grand Canyon Ry	77,973	57,756	74.07	29,966	.....	24,965	1,231	66.71
Santa Fe, Prescott & Phoenix Ry	1,045,232	485,644	46.46	260,275	.....	123,250	53,478	238.71
Beaumont Wharf & Terminal Co	49,481	65,282	131.93	45,746	.....	8,218	9,265	3.41
Pecos Valley & Northeastern Ry	494,903	275,308	55.63	144,015	.....	65,162	53,129	221.47
Atchison, Topeka & Santa Fe Ry.—Coast Lines	11,730,969	7,314,080	62.35	3,736,408	.....	1,384,050	1,856,123	1,310.71
Gulf, Beaumont & Kansas City Ry	496,110	439,853	88.66	190,194	.....	107,180	121,156	107.44
Southern California Ry	3,862,257	2,300,083	59.55	1,221,401	.....	541,415	450,601	478.18
Randsburg Ry [1]	43,555	17,962	41.24	7,876	.....	4,318	1,643	24.71
Total	65,137,373	40,588,944	62.31	20,404,188	50.27	9,694,162	8,788,611	8,789.04
Year ending June 30, 1902:								
Atchison, Topeka & Santa Fe Ry	37,515,118	20,044,204	53.43	10,932,452	.....	3,514,573	4,724,888	4,819.68
Southern Kansas Ry. Co. of Texas	293,672	216,519	73.73	145,397	.....	47,055	15,411	129.17
Pecos & Northern Texas Ry	251,772	138,952	55.19	84,801	.....	22,148	23,820	94.50
Pecos River R. R	39,282	34,090	86.78	21,056	.....	5,846	4,540	54.27
Grand Canyon Ry. [1]	43,118	35,352	81.98	22,851	.....	8,715	3,399	55.44
Santa Fe, Prescott & Phoenix Ry	1,050,035	437,817	41.70	228,167	.....	104,257	55,407	223.60
Beaumont Wharf & Terminal Co	40,452	40,759	100.75	28,293	.....	7,861	2,847	3.41
Pecos Valley & Northeastern Ry	326,142	238,161	73.02	112,754	.....	47,817	62,531	221.47
Gulf, Beaumont & Kansas City Ry	339,596	348,006	102.48	143,837	.....	115,443	73,980	72.66
Southern California Ry	3,559,871	1,974,826	55.47	1,164,698	.....	375,336	350,833	485.11
Kansas Southwestern Ry [3]	47,297	37,266	78.79	18,534	.....	11,874	1,532	43.96
San Francisco & San Joaquin Valley Ry	2,407,089	1,525,807	63.39	945,036	.....	255,546	253,461	372.48
Santa Fe Pacific R. R	8,276,745	5,298,332	64.01	2,798,288	.....	817,422	1,499,142	887.99
Gulf, Colorado & Santa Fe Ry	7,260,495	5,396,374	74.33	3,003,361	.....	1,131,534	1,021,217	1,173.64
California Eastern Ry	38,020	29,723	78.17	13,246	.....	3,474	1,926	45.44
Total	61,488,704	35,796,188	58.22	19,662,771	54.93	6,468,901	8,094,934	8,682.82

[1] Figures from report for ten months ending June 30, 1902.
[2] Figures from report for period, October 26, 1901, to June 30, 1902.
[3] Figures from report for ten months ending April 30, 1903; proprietary to Atch. Top. & S. Fe Ry.—Coast Lines since that date.

ATCHISON, TOPEKA & SANTA FE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1901:								
Atchison, Topeka & Santa Fe Ry	$35,349,805	$19,922,731	56.36	$10,581,732	.....	$3,817,977	$3,833,209	4,815.09
Southern Kansas Ry. Co. of Texas	223,379	185,539	83.06	108,002	.....	56,931	10,865	129.17
Pecos & Northern Texas Ry	172,067	113,079	65.72	69,978	.....	19,219	13,302	94.50
Pecos River R. R	29,559	25,771	87.19	16,349	.....	8,224	24	54.27
Gulf, Colorado & Santa Fe Ry	7,188,807	4,960,702	69.01	2,703,554	.....	1,163,140	846,135	1,127.81
Beaumont Wharf & Terminal Co	47,551	40,193	84.53	25,722	.....	6,217	5,696	8.47
Pecos Valley & Northeastern Ry	251,105	197,470	78.64	90,118	.....	36,247	39,965	221.47
Gulf, Beaumont & Kansas City Ry	280,049	220,865	78.87	97,839	.....	66,325	44,405	62.37
Southern California Ry	2,998,496	1,735,857	57.89	1,017,067	.....	378,872	265,127	487.37
San Francisco & San Joaquin Valley Ry	1,806,534	1,489,748	82.25	889,362	.....	294,112	251,793	372.57
Santa Fe Pacific R. R	7,078,990	4,499,214	63.56	2,576,715	.....	637,908	1,135,228	887.99
Total	55,426,342	33,391,169	60.24	18,176,438	54.43	6,485,172	6,445,749	8,261.08
Year ending June 30, 1900:								
Atchison, Topeka & Santa Fe Ry	30,958,238	17,913,863	57.86	9,620,431	.....	3,998,969	3,614,213	4,739.12
Southern Kansas Ry. Co. of Texas	214,617	217,079	101.15	135,654	.....	55,254	19,134	129.17
Southern California Ry	2,849,576	1,567,069	54.99	920,750	.....	376,270	197,562	487.37
San Francisco & San Joaquin Valley Ry	615,348	487,199	79.17	289,395	.....	114,162	54,792	333.16
Santa Fe Pacific R. R	6,377,453	3,789,228	59.41	2,044,542	.....	813,673	797,303	870.63
Hutchinson & Southern Ry. [1]	76,670	34,306	44.75	18,896	.....	9,471	2,056	35.95
Gulf, Colorado & Santa Fe Ry	5,990,406	4,475,728	74.71	2,489,249	.....	1,025,359	723,747	1,127.81
Total	47,082,308	28,484,472	60.50	15,518,917	54.48	6,393,158	5,408,807	7,723.21

[1] Figures from report for three months ending September 30, 1899: Merged in Atch., Top. & S. Fe Ry.

GREAT NORTHERN SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909 [1]	$53,780,473	$32,613,545	60.64	$14,860,609	45.57
1908 [1]	54,506,874	36,248,897	66.50	16,753,430	46.22
1907	56,999,891	33,285,317	58.40	18,144,913	54.51
1906	52,766,018	26,399,644	50.03	13,802,802	52.28
1905	44,871,839	21,941,178	48.90	11,442,358	52.15
1904	40,946,815	20,968,806	51.21	11,617,396	55.40
1903	41,643,798	20,478,317	49.17	11,045,710	53.94
1902	37,090,580	18,161,400	48.96	9,736,800	53.61
1901	29,133,888	16,251,208	55.78	8,613,501	53.00
1900	29,800,942	15,186,446	50.96	7,919,309	52.15

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

GREAT NORTHERN SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Great Northern Ry	$53,266,090	$32,187,702	60.43	$14,634,913	45.47	$9,702,379	$6,112,133	6,728.41
Duluth Terminal Ry	[2]	19,826		42	.21	19,340		1.82
Minneapolis Western Ry	40,896	34,611	84.63	22,275	64.36	5,924	5,975	2.03
Farmers' Grain & Shipping Co	82,859	60,173	72.62	31,375	52.14	16,106	7,072	66.12
Iowa & Great Northern Ry	380,458	300,968	79.11	165,316	54.93	59,347	55,738	77.86
Kootenai Valley Ry	10,170	30,091	295.89	6,730	22.36	20,933	1,147	25.79
Total [1]	53,780,473	32,613,545	60.64	14,860,609	45.57	9,804,689	6,182,065	6,900.21
Year ending June 30, 1908:								
Great Northern Ry	54,069,539	35,867,600	66.34	16,561,208	46.17	9,969,677	7,856,434	6,514.56
Duluth Terminal Ry	[2]	3,467		136	3.93	3,233		1.82
Minneapolis Western Ry	49,100	37,495	76.36	26,507	70.70	7,347	3,216	2.03
Farmers' Grain & Shipping Co	66,108	70,554	106.72	33,107	46.92	20,949	11,081	66.12
Iowa & Great Northern Ry. [3]	310,994	239,113	76.89	125,623	52.53	40,240	57,738	51.91
Kootenai Valley Ry	11,133	34,135	306.61	6,985	20.47	24,478	1,319	25.79
Total [1]	54,506,874	36,248,897	66.50	16,753,430	46.22	10,062,691	7,929,788	6,660.41

[1] Totals exclude data for Duluth Terminal Ry. See Note 2.
[2] All income reported as "Joint facilities rents."
[3] Figures cover operations for eight months ending June 30, 1908.

GREAT NORTHERN SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1907:								
Great Northern Ry	$50,208,035	$29,446,866	58.65	$15,843,882	.....	$7,264,267	$5,343,567	5,226.48
Duluth Terminal Ry	45,876	28,447	62.01	78	.....	28,273	42	1.82
Minneapolis Western Ry	49,598	39,243	79.12	29,068	.....	5,886	3,820	2.03
Duluth, Watertown & Pacific Ry	177,426	108,670	61.25	52,624	.....	38,224	12,888	69.84
Minneapolis Union Ry	294,794	86,890	29.47	66,544	.....	19,472	.....	2.63
Willmar & Sioux Falls Ry	2,027,612	1,353,052	66.73	816,285	.....	356,958	144,174	436.73
Spokane Falls & Northern Ry	931,353	551,905	59.26	333,856	.....	138,707	59,285	139.28
Columbia & Red Mountain Ry	25,573	26,877	105.10	16,257	.....	7,823	1,833	7.51
Washington & Great Northern Ry	350,219	152,712	43.60	88,191	.....	38,117	17,850	93.53
Montana Central Ry	2,889,405	1,490,655	51.59	898,128	.....	309,412	224,222	253.31
Total	56,999,891	33,285,317	58.40	18,144,913	54.51	8,207,139	5,807,681	6,233.16
Year ending June 30, 1906:								
Great Northern Ry	46,368,411	23,007,266	49.62	11,865,251	.....	5,736,344	4,502,645	5,150.56
Duluth Terminal Ry	37,591	18,986	50.51	55	.....	18,901	.....	1.82
Duluth, Watertown & Pacific Ry	159,113	79,322	49.85	39,474	.....	23,578	12,076	69.84
Minneapolis Union Ry	290,664	82,286	28.31	55,988	.....	25,520	.....	2.63
Willmar & Sioux Falls Ry	2,017,381	1,153,085	57.14	718,749	.....	283,050	119,931	436.73
Spokane Falls & Northern Ry	811,820	447,935	55.19	275,456	.....	107,403	47,133	139.28
Columbia & Red Mountain Ry	23,454	26,024	110.96	12,995	.....	10,012	2,051	7.51
Washington & Great Northern Ry	214,415	100,022	46.65	48,352	.....	26,407	18,588	83.90
Montana Central Ry	2,843,169	1,484,118	52.20	786,482	.....	380,082	267,631	253.31
Total	52,766,018	26,399,644	50.03	13,802,802	52.28	6,611,297	4,970,055	6,145.58

GREAT NORTHERN SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1905:								
Great Northern Ry	$39,471,904	$19,048,580	48.26	$9,738,405	.....	$5,000,535	$3,526,264	4,967.49
Duluth Terminal Ry	32,173	13,661	42.46	52	.....	13,579	.....	1.82
Duluth, Watertown & Pacific Ry	108,163	52,849	48.86	25,636	.....	18,625	5,817	69.84
Willmar & Sioux Falls Ry	1,643,169	1,011,019	61.53	632,768	.....	246,286	104,005	436.73
Spokane Falls & Northern Ry	716,184	388,022	54.18	208,991	.....	99,979	40,894	139.28
Columbia & Red Mountain Ry	36,652	30,659	83.64	19,508	.....	7,818	2,049	7.51
Washington & Great Northern Ry	132,969	66,945	50.35	33,726	.....	25,012	5,031	69.38
Montana Central Ry	2,422,674	1,222,806	50.48	727,760	.....	254,814	195,161	253.31
Minneapolis Union Ry	307,951	106,637	34.62	55,512	.....	50,313	.....	2.63
Total	44,871,839	21,941,178	48.90	11,442,358	52.15	5,716,961	3,879,221	5,947.99
Year ending June 30, 1904:								
Great Northern Ry	36,210,285	18,002,768	49.72	9,979,496	.....	4,319,703	2,889,101	4,863.95
Duluth Terminal Ry	34,413	15,074	43.80	133	.....	14,540	.....	1.82
Duluth, Watertown & Pacific Ry	131,322	74,448	56.69	29,318	.....	35,564	6,353	69.84
Willmar & Sioux Falls Ry	1,487,681	1,089,755	73.25	571,841	.....	385,089	104,496	436.73
Spokane Falls & Northern Ry	649,986	410,755	63.19	243,070	.....	118,288	31,330	140.60
Columbia & Red Mountain Ry	52,446	44,760	85.34	24,562	.....	16,011	2,690	7.51
Montana Central Ry	2,380,682	1,331,246	55.92	768,976	.....	316,555	199,714	256.43
Total	40,946,815	20,968,806	51.21	11,617,396	55.40	5,205,750	3,233,684	5,776.88

GREAT NORTHERN SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1903:								
Great Northern Ry	$37,019,581	$17,585,281	47.50	$9,469,739	.....	$4,540,858	$2,858,653	4,723.01
Duluth Terminal Ry	36,142	16,785	46.44	145	.....	15,908	.....	1.82
Duluth, Watertown & Pacific Ry	101,213	60,788	60.06	28,493	.....	23,723	5,735	69.84
Willmar & Sioux Falls Ry	1,502,221	961,049	63.98	561,925	.....	274,610	98,586	436.73
Spokane Falls & Northern Ry	696,942	411,254	59.01	224,210	.....	122,827	45,636	140.60
Columbia & Red Mountain Ry	61,415	41,363	67.35	29,548	.....	7,191	3,036	7.47
Montana Central Ry	2,226,284	1,401,797	62.96	731,650	.....	416,438	208,454	260.22
Total	41,643,798	20,478,317	49.17	11,045,710	53.94	5,401,555	3,220,100	5,639.69
Year ending June 30, 1902:								
Great Northern Ry	28,471,207	14,111,693	49.56	7,557,189	.....	3,781,664	2,211,125	4,156.43
Duluth Terminal Ry	36,233	17,072	47.12	43	.....	15,502	.....	1.82
Duluth, Watertown & Pacific Ry	89,019	36,299	40.78	18,982	.....	12,982	2,864	69.84
Willmar & Sioux Falls Ry	1,520,990	856,228	56.29	454,632	.....	286,844	88,268	436.73
Spokane Falls & Northern Ry	866,684	362,154	41.79	189,403	.....	108,621	47,023	140.60
Columbia & Red Mountain Ry	75,116	43,112	57.40	26,253	.....	12,553	2,843	7.47
Montana Central Ry	1,789,980	1,107,553	61.88	539,788	.....	333,785	190,604	264.56
Eastern Ry. Co. of Minnesota[1]	4,241,351	1,627,289	38.37	950,510	.....	278,037	280,101	349.18
Total	37,090,580	18,161,400	48.96	9,736,800	53.61	4,829,988	2,822,828	5,426.63

[1] Figures cover operations for ten months ending April 30, 1902; leased to Great Northern Ry.

GREAT NORTHERN SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1901:								
Great Northern Ry	$20,939,033	$12,087,358	57.72	$6,310,695	.....	$3,443,517	$1,835,029	4,060.25
Duluth Terminal Ry	39,471	19,762	50.07	.....	.....	18,159	.....	1.82
Duluth, Watertown & Pacific Ry	56,690	44,241	78.04	15,661	.....	25,040	2,270	69.84
Willmar & Sioux Falls Ry	1,484,119	936,846	63.13	471,591	.....	330,619	111,689	436.73
Spokane Falls & Northern Ry	589,993	382,723	64.87	217,649	.....	99,884	48,144	140.60
Columbia & Red Mountain Ry	81,014	41,349	51.04	28,960	.....	6,143	3,743	7.47
Montana Central Ry	2,199,223	1,181,939	53.74	628,388	.....	291,038	224,142	265.21
Eastern Ry. Co. of Minnesota	3,744,345	1,556,990	41.58	940,557	.....	297,872	222,810	465.31
Total	29,133,888	16,251,208	55.78	8,613,501	53.00	4,512,272	2,447,827	5,447.23
Year ending June 30, 1900:								
Great Northern Ry	22,005,710	11,635,090	52.87	5,964,728	.....	3,525,704	1,679,470	4,085.10
Duluth Terminal Ry	37,442	17,001	45.41	1	.....	15,017	.....	1.78
Duluth, Watertown & Pacific Ry	76,218	34,241	44.92	15,419	.....	15,123	2,530	69.84
Willmar & Sioux Falls Ry	1,157,145	502,481	43.42	268,889	.....	155,720	53,946	322.49
Sioux City & Western Ry[1]	127,012	74,555	58.69	38,351	.....	21,403	9,338	66.24
Spokane Falls & Northern Ry	597,356	222,544	37.25	113,941	.....	67,377	24,188	140.60
Columbia & Red Mountain Ry	70,350	26,386	37.51	17,113	.....	5,319	2,146	7.47
Montana Central Ry	2,018,415	1,059,243	52.47	590,456	.....	262,326	169,351	266.00
Eastern Ry. Co. of Minnesota	3,711,294	1,614,905	43.51	910,411	.....	357,894	249,175	430.94
Total	29,800,942	15,186,446	50.96	7,919,309	52.15	4,425,883	2,190,144	5,390.46

[1] Figures from report for six months ending December 31, 1899; proprietary road of Willmar & Sioux Falls Ry.

DENVER & RIO GRANDE SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909 [1]	$21,654,368	$14,935,923	68.97	$7,534,682	50.45
1908 [1]	21,240,977	13,615,675	64.10	6,983,656	51.29
1907	21,821,202	13,898,366	63.69	7,806,283	56.17
1906	20,204,973	12,750,940	63.11	6,998,155	54.88
1905	17,309,402	10,639,600	61.47	5,903,420	55.49
1904	16,741,871	10,519,023	62.83	5,779,054	54.94
1903	17,771,220	10,959,537	61.67	6,046,837	55.17
1902	17,525,555	10,692,038	61.01	5,806,487	54.31
1901	11,979,527	7,437,184	62.08	4,266,421	57.37
1900	10,756,817	6,785,725	63.08	3,982,034	58.68

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

DENVER & RIO GRANDE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Denver & Rio Grande R. R.	$20,876,571	$14,452,574	69.23	$7,294,231	50.47	$2,530,109	$3,572,327	2,534.31
Rio Grande Southern R. R.	576,152	379,973	65.95	191,813	50.48	125,205	42,018	179.79
Boca & Loyalton R. R.	201,645	103,376	51.27	48,638	47.05	28,988	16,831	50.25
Total	21,654,368	14,935,923	68.97	7,534,682	50.45	2,684,302	3,631,176	2,764.35
Year ending June 30, 1908:								
Denver & Rio Grande R. R.	20,387,437	13,038,809	63.96	6,729,470	51.61	2,207,697	3,168,744	2,499.18
Rio Grande Southern R. R.	605,753	379,372	62.63	179,407	47.29	137,369	43,657	179.79
Boca & Loyalton R. R.	214,768	135,017	62.87	56,587	41.91	39,549	29,088	50.30
San Pete Valley Ry.	33,019	62,477	189.21	18,192	29.13	32,050	7,105	45.37
Total	21,240,977	13,615,675	64.10	6,983,656	51.29	2,416,665	3,248,594	2,774.64
Year ending June 30, 1907:								
Denver & Rio Grande R. R.	21,209,562	13,512,854	63.71	7,621,240	.....	2,349,841	2,940,742	2,499.80
Rio Grande Southern R. R.	611,640	385,512	63.03	185,043	.....	138,163	44,454	180.40
Total	21,821,202	13,898,366	63.69	7,806,283	56.17	2,488,004	2,985,196	2,680.20

DENVER & RIO GRANDE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1906:								
Denver & Rio Grande R. R.	$19,487,626	$12,313,155	63.18	$6,773,683	.....	$2,415,353	$2,566,411	2,476.55
Rio Grande Southern R. R.	562,908	326,647	58.03	169,960	.....	114,329	25,431	180.40
Rio Grande & Southwestern R. R.	11,577	14,474	125.02	9,483	.....	4,991	.....	33.00
Boca & Loyalton R. R. [1]	142,862	96,664	67.66	45,029	.....	23,290	15,726	39.74
Total	20,204,973	12,750,940	63.11	6,998,155	54.88	2,557,963	2,607,568	2,729.69
Year ending June 30, 1905:								
Denver & Rio Grande R. R.	16,836,501	10,365,322	61.56	5,764,216	.....	1,998,494	2,031,523	2,420.39
Rio Grande Southern R. R.	466,386	261,483	56.07	131,269	.....	88,813	24,150	180.40
Rio Grande & Southwestern R. R.	6,515	12,795	196.40	7,935	.....	4,860	.....	33.00
Total	17,309,402	10,639,600	61.47	5,903,420	55.49	2,092,167	2,055,673	2,633.79
Year ending June 30, 1904:								
Denver & Rio Grande R. R.	16,282,487	10,249,574	62.95	5,639,781	.....	2,174,828	1,919,519	2,398.35
Rio Grande Southern R. R.	459,384	269,449	58.65	139,273	.....	81,783	31,035	180.40
Total	16,741,871	10,519,023	62.83	5,779,054	54.94	2,256,611	1,950,554	2,578.75
Year ending June 30, 1903:								
Denver & Rio Grande R. R.	17,217,666	10,682,397	62.04	5,900,522	.....	2,293,465	1,942,914	2,377.72
Rio Grande Southern R. R.	553,554	277,140	50.06	146,315	.....	82,346	32,272	180.40
Total	17,771,220	10,959,537	61.67	6,046,837	55.17	2,375,811	1,975,186	2,558.12

[1] Figures from report for period, September 6, 1905, to June 30, 1906.

DENVER & RIO GRANDE SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1902:								
Denver & Rio Grande R. R.	$16,949,880	$10,377,135	61.22	$5,658,999	.....	$2,456,233	$1,718,379	2,347.34
Rio Grande Southern R. R.	575,675	314,903	54.70	147,488	.....	112,001	36,442	180.40
Total	17,525,555	10,692,038	61.01	5,806,487	54.31	2,568,234	1,754,821	2,527.74
Year ending June 30, 1901:								
Denver & Rio Grande R. R.	11,439,908	7,149,146	62.49	4,125,400	.....	1,548,769	1,087,899	1,673.23
Rio Grande Southern R. R.	539,529	288,038	53.39	141,021	.....	95,448	31,262	180.40
Total	11,979,527	7,437,184	62.08	4,266,421	57.37	1,644,217	1,119,161	1,853.63
Year ending June 30, 1900:								
Denver & Rio Grande R. R.	10,231,680	6,503,035	63.56	3,851,312	.....	1,381,218	935,360	1,656.72
Rio Grande Southern R. R.	525,137	282,690	53.83	130,722	.....	97,010	34,273	180.40
Total	10,756,817	6,785,725	63.08	3,982,034	58.68	1,478,228	969,633	1,837.12

CANADIAN PACIFIC SYSTEM.

Recapitulation of Statement Showing Operating Revenues, Operating Expenses, etc.

Year ending June 30—	Operating revenues.	Operating expenses.		Transportation expenses.	
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).
1909 [1]	$95,192,983	$65,296,505	68.59	$33,629,615	51.50
1908 [1]	81,803,086	56,954,797	69.62	29,504,380	51.80
1907	90,137,787	57,397,040	63.68	32,149,636	56.01
1906	77,920,832	47,311,590	60.72	25,798,177	54.53
1905	63,398,557	42,282,016	66.69	22,888,145	54.13
1904	57,344,719	38,817,496	67.69	21,908,679	56.44
1903	55,252,325	34,538,642	62.51	18,901,867	54.73
1902	47,647,117	28,972,448	60.81	15,900,523	54.88
1901	39,016,609	23,884,913	61.22	13,362,072	55.94
1900	39,530,649	23,235,860	58.78	13,338,909	57.41

[1] The classification of operating revenues and the classification of operating expenses became effective July 1, 1907.

CANADIAN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1909:								
Canadian Pacific Ry.[1]	$71,616,046	$50,397,153	70.37	$25,568,990	50.74	$10,074,049	$11,080,887	9,737.10
International Ry. of Maine	1,008,405	963,488	95.53	482,632	50.09	198,499	198,539	233.30
Newport & Richford R. R	165,096	191,953	116.27	127,744	66.55	47,356	16,854	21.00
Duluth, South Shore & Atlantic Ry	2,719,338	1,979,518	72.79	1,027,071	51.88	445,281	327,700	593.25
Mineral Range R. R	826,375	701,033	84.83	398,116	56.79	147,432	132,877	129.26
Minneapolis, St. Paul & Sault Ste. Marie Ry	12,339,755	6,914,607	56.03	3,794,086	54.87	1,262,244	1,364,319	2,359.75
Wisconsin Central Ry	7,494,355	5,094,507	67.98	2,705,385	53.10	850,366	1,019,772	975.64
Abbotsford & Northeastern R. R	32,018	17,734	55.38	8,223	46.37	7,598	464	15.16
Sainte Marie Union Depot Co.[2]								
Sault Ste. Marie Bridge Co.[2]								
Total[3]	95,192,983	65,296,505	68.59	33,629,015	51.50	12,834,356	13,942,963	14,064.46

[1] Data include operations over 232.9 miles of line lying in the State of Maine for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R. R. of Maine, and 56.6 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. See Note 1.

[3] Filed report in "Form C—Switching and Terminal Companies:" operated at cost for joint benefit.

CANADIAN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1908:								
Canadian Pacific Ry.[1]	$66,727,400	$46,824,799	70.17	$23,927,611	51.10	$10,410,752	$9,358,138	9,212.50
International Ry. of Maine	984,638	875,232	88.88	440,212	50.30	207,263	171,895	233.30	
Newport & Richford R. R	153,975	153,801	99.88	99,913	64.96	36,870	17,018	21.00	
Duluth, South Shore & Atlantic Ry	2,921,916	2,206,215	75.51	1,136,354	51.49	561,404	351,855	594.86	
Mineral Range R. R	806,075	688,865	85.46	386,550	56.12	136,248	144,088	128.65	
Minneapolis, St. Paul & Sault Ste. Marie Ry	11,193,720	7,081,117	63.26	3,953,952	55.84	1,330,856	1,361,625	2,303.91	
Sault Ste. Marie Bridge Co.[3]									
Ste. Marie Union Depot Co.[3]									
Total[2]	81,803,086	56,954,797	69.62	29,504,380	51.80	12,476,130	11,232,724	12,260.92	
Year ending June 30, 1907:								
Canadian Pacific Ry.[1]	72,217,528	46,189,732	63.96	25,531,155		10,110,957	9,083,249	8,968.10	
International Ry. of Maine	995,120	899,984	90.43	487,503		225,360	152,919	233.30	
Duluth, South Shore & Atlantic Ry	3,311,878	2,320,858	70.08	1,420,227		517,526	301,752	590.08	
Mineral Range R. R	786,941	617,144	78.42	387,017		135,773	75,903	140.78	
Minneapolis, St. Paul & Sault Ste. Marie Ry	12,948,048	7,597,595	58.67	4,423,894		1,495,147	1,440,086	2,232.50	
Montreal & Atlantic Ry.[4]	787,844	644,224	81.77	371,188		169,529	81,678	184.40	
Sainte Marie Union Depot Co	16,022	16,022	100.00	12,454		3,472		.56	
Sault Ste. Marie Bridge Co.[5]	69,526	11,465	16.49	3,701		6,690		1.22	
Total[2]	90,137,787	57,397,040	63.68	32,149,636	56.01	12,439,094	10,982,668	12,118.24	

[1] Data include operations over 233.3 miles of line lying in the State of Maine for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R. R. of Maine, and 56.6 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. See Note 1.

[3] Filed report in "Form C—Switching and Terminal Companies;" operated at cost for joint benefit.

[4] Data include operations over 163.40 miles in Canada.

[5] Data include operations over 0.86 miles in Canada.

CANADIAN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1906:								
Canadian Pacific Ry.[1]	$61,669,758	$38,101,038	61.78	$20,257,537	.....	$9,105,250	$7,369,566	8,685.00
International Ry. of Maine	913,829	840,218	91.94	465,524	.....	210,041	122,803	232.80
Duluth, South Shore & Atlantic Ry	3,057,809	2,057,460	67.29	1,234,838	.....	477,303	265,377	592.69
Mineral Range R. R	739,341	576,081	77.92	364,406	.....	132,797	62,087	143.72
Minneapolis, St. Paul & Sault Ste. Marie Ry	11,588,262	5,905,868	50.96	3,571,566	.....	1,023,734	1,090,480	2,020.39
Montreal & Atlantic Ry.[3]	759,706	645,583	84.98	355,877	.....	178,622	92,642	184.40
Sault Ste. Marie Bridge Co.[4]	91,070	10,674	11.72	2,078	.....	7,593	.....	1.22
Sainte Marie Union Depot Co	14,886	14,886	100.00	11,845	.....	2,962	.....	.56
Total[2]	77,920,832	47,311,590	60.72	25,708,177	54.53	10,928,261	8,880,152	11,627.98
Year ending June 30, 1905:								
Canadian Pacific Ry.[1]	50,481,882	34,604,546	68.55	18,228,802	.....	8,527,035	6,616,258	8,498.38
International Ry. of Maine	750,419	858,091	114.35	410,985	.....	282,597	114,130	232.80
Duluth, South Shore & Atlantic Ry	2,706,936	1,852,705	68.44	1,107,043	.....	436,316	227,768	585.81
Mineral Range R. R	683,299	516,456	75.58	340,889	.....	106,113	53,069	141.76
Minneapolis, St. Paul & Sault Ste. Marie Ry	8,797,885	4,676,816	53.16	2,861,382	.....	743,693	881,702	1,773.98
Montreal & Atlantic Ry.[3]	666,413	620,910	93.17	347,733	.....	184,729	68,534	184.40
Sault Ste. Marie Bridge Co.[4]	62,142	10,583	17.03	2,286	.....	6,804	.....	1.22
Total[2]	63,398,557	42,282,016	66.69	22,888,145	54.13	10,004,690	7,847,331	11,185.55

[1] Data include operations over 232.8 miles of line lying in the State of Maine for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R.R. of Maine, and 56.1 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. See Note 1.

[3] Data include operations over 163.4 miles in Canada.

[4] Data include operations over 0.86 miles in Canada.

CANADIAN PACIFIC SYSTEM—Continued-

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1904:								
Canadian Pacific Ry. [1]	$46,469,132	$31,930,597	68.72	$17,807,321	.....	$6,936,408	$5,923,163	8,332.00
International Ry. of Maine	678,560	796,248	117.34	413,224	.....	216,413	115,741	232.80
Duluth, South Shore & Atlantic Ry	2,524,612	1,749,456	69.30	1,041,804	.....	406,722	219,311	578.67
Mineral Range R. R	589,799	514,597	87.25	319,340	.....	127,762	51,347	138.29
Minneapolis, St. Paul & Sault Ste. Marie Ry	7,150,072	3,995,199	55.88	2,391,995	.....	705,517	730,674	1,529.85
Montreal & Atlantic Ry. [3]	542,245	610,542	112.59	344,446	.....	182,858	65,588	184.70
Sault Ste. Marie Bridge Co. [4]	68,859	17,105	24.84	3,773	.....	12,846	.....	1.22
Total [2]	57,344,719	38,817,496	67.69	21,908,679	56.44	8,372,113	6,990,083	10,764.73
Year ending June 30, 1903:								
Canadian Pacific Ry. [1]	43,957,373	27,856,264	63.37	15,028,477	.....	6,723,241	4,351,629	7,748.40
International Ry. of Maine	657,886	678,625	103.15	355,477	.....	154,964	103,035	232.80
Duluth, South Shore & Atlantic Ry	2,772,135	1,758,090	63.42	1,001,693	.....	433,516	236,446	573.07
Mineral Range R. R	560,458	455,437	81.26	301,569	.....	95,015	41,879	133.67
Minneapolis, St. Paul & Sault Ste. Marie Ry	7,338,039	3,904,764	53.21	2,282,868	.....	800,792	661,058	1,463.97
Montreal & Atlantic Ry. [3]	557,669	548,984	98.44	283,858	.....	178,484	60,880	184.70
Sault Ste. Marie Bridge Co. [4]	66,651	15,103	22.66	3,402	.....	10,806	.....	1.22
Total [2]	55,252,325	34,538,642	62.51	18,901,867	54.73	8,241,854	5,351,892	10,105.03

[1] Data include operations over 232.8 miles of line lying in the State of Maine, for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R. R. of Maine, and 56.1 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. (See Note 1.

[3] Data includes operations over 163.7 miles in Canada.

[4] Data includes operations over 0.86 mile in Canada.

CANADIAN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to total operating expenses (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1902:								
Canadian Pacific Ry.[1]	$37,503,054	$23,193,565	61.84	$12,625,593	.....	$5,408,196	$3,570,726	7,587.80
International Ry. of Maine	636,179	615,848	96.80	330,851	.....	134,755	92,429	232.80
Duluth, South Shore & Atlantic Ry	2,690,819	1,688,818	62.76	933,262	.....	451,055	228,566	574.73
Mineral Range R. R	592,648	489,979	82.68	319,256	.....	113,986	41,544	126.95
Minneapolis, St. Paul & Sault Ste. Marie Ry	6,293,939	3,098,854	49.23	1,753,432	.....	684,160	521,182	1,396.43
Montreal & Atlantic Ry.[3]	503,480	489,669	97.26	265,222	.....	148,374	53,126	184.70
Sault Ste. Marie Bridge Co.[4]	63,177	11,563	18.30	3,758	.....	7,662	.....	1.22
Total[2]	47,647,117	28,972,448	60.81	15,900,523	54.88	6,813,433	4,415,144	9,871.83
Year ending June 30, 1901:								
Canadian Pacific Ry.[1]	30,855,204	18,544,629	60.12	10,326,853	.....	4,172,748	2,675,587	7,563.30
International Ry. of Maine	476,614	510,973	107.21	269,603	.....	123,989	66,844	232.80
Duluth, South Shore & Atlantic Ry	2,484,211	1,655,531	66.64	932,361	.....	421,389	227,649	577.71
Mineral Range R. R	344,348	290,239	84.29	174,853	.....	84,299	22,090	61.40
Hancock & Calumet R. R.[5]	247,065	210,777	85.31	126,631	.....	46,510	30,696	35.87
Minneapolis, St. Paul & Sault Ste. Marie Ry	4,593,892	2,744,052	59.73	1,531,583	.....	620,495	476,248	1,312.32
Montreal & Atlantic Ry.[3]	491,889	439,685	89.39	269,791	.....	98,240	51,415	184.40
Total[2]	39,016,609	23,884,913	61.22	13,362,072	55.94	5,443,681	3,483,685	9,735.00

[1] Data include operations over 232.8 miles of line lying in the State of Maine for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R. R. of Maine, and 56.1 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. See Note 1.

[3] Data include operations over 163.7 miles in Canada.

[4] Data include operations over 0.86 mile in Canada.

[5] Figures from report for eleven months ending May 31, 1901; proprietary to Mineral Range R. R. since that date.

CANADIAN PACIFIC SYSTEM—Continued.

	Operating revenues.	Operating expenses.		Transportation expenses.		Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
		Amount.	Ratio to operating revenues (per cent).	Amount.	Ratio to total operating expenses (per cent).			
Year ending June 30, 1900:								
Canadian Pacific Ry.[1]	$30,709,473	$18,081,392	58.88	$10,288,632	.....	$3,813,431	$2,595,002	7,467.40
International Ry. of Maine	516,300	489,276	94.77	272,583	.....	94,852	69,146	232.80
Duluth, South Shore & Atlantic Ry	2,613,943	1,557,243	59.57	891,631	.....	384,995	210,382	578.74
Mineral Range R. R.	277,561	236,056	85.05	157,440	.....	56,059	14,291	27.51
Hancock & Calumet R. R.	266,992	215,745	80.81	124,438	.....	45,660	37,525	40.22
Minneapolis St. Paul & Sault Ste. Marie Ry.	5,191,122	2,723,676	52.47	1,628,610	.....	537,647	445,793	1,285.74
Montreal & Atlantic Ry.[2]	471,558	421,748	89.44	248,158	.....	104,729	48,319	184.40
Total[3]	39,530,649	23,235,860	58.78	13,338,909	57.41	4,942,521	3,351,312	9,584.01

[1] Data include operations over 232.8 miles of line lying in the State of Maine for which a separate operating report is rendered, representing operations over 144.5 miles owned by the International Ry. of Maine, 3.0 miles owned by the Houlton Branch R. R. of Maine, 29.2 miles owned by the Aroostook River R. R. of Maine, and 56.1 miles (trackage rights) owned by the Maine Central R. R.

[2] Excludes data shown against International Ry. of Maine. See Note 1.

[3] Data include operations over 163.4 miles in Canada.

8276 Q. I call your attention to Complainant's Exhibit 216, which is grand recapitulation of statement showing maintenance of way and structures, maintenance of equipment, and average mileage operated during the year, for the same seven systems as the ones to which the other exhibits just introduced apply, and I will ask you whether these figures were prepared under your direction?

A. They were.

Q. And do they correctly disclose the figures as shown by the annual reports of the companies named?

A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 216 in evidence.

Complainant's Exhibit 216 (Peter) is as follows:

COMPLAINANT'S EXHIBIT 216.

(Peter.)

INTERSTATE COMMERCE COMMISSION,
Washington.

I Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of data in the original annual reports of the carriers severally named, now on file with this Commission, or represent totals, averages, etc., based on those reports.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this thirtieth day of March, 1910.

(Sgd.) EDW. A. MOSELEY,
Secretary.

Seal: Interstate Commerce Commission, 1887.

GRAND RECAPITULATION OF

Statement Showing Maintenance of Way and Structures, Maintenance of Equipment, etc.

	1909.[1]	1908.[1]	1907.	1906.	1905.	1904.	1903.	1902.	1901.	1900.	Total.
Maintenance of way and structures:											
Union Pacific System	$7,718,845	$9,420,565	$10,226,241	$10,055,216	$7,469,173	$6,630,019	$5,384,307	$6,035,122	$5,535,836	$4,134,821	$72,610,145
Southern Pacific System	14,579,923	17,889,761	16,301,811	16,913,403	13,801,133	12,151,031	12,926,544	11,951,676	10,002,763	8,679,229	135,197,274
Northern Pacific System	7,986,975	9,126,652	9,260,329	7,660,220	7,491,603	6,751,412	7,362,602	6,976,986	5,387,303	5,276,573	73,280,655
Atchison, Topeka & Santa Fe System	12,991,302	14,522,313	15,497,552	13,176,473	11,989,627	9,656,717	9,694,162	6,468,901	6,485,172	6,393,158	106,875,377
Great Northern System	9,804,689	10,062,691	8,207,139	6,611,297	5,716,961	5,205,750	5,401,555	4,829,988	4,512,272	4,425,883	64,778,225
Denver & Rio Grande System	2,684,302	2,416,665	2,488,004	2,557,963	2,092,167	2,256,611	2,375,811	2,568,234	1,644,217	1,478,228	22,562,202
Canadian Pacific System	12,834,356	12,476,130	12,439,094	10,928,261	10,004,690	8,372,113	8,241,854	6,813,433	5,443,681	4,942,521	92,496,133
Maintenance of equipment:											
Union Pacific System	7,439,787	8,291,396	7,877,469	7,159,256	6,910,141	6,137,848	6,048,718	4,582,899	4,488,294	4,029,318	62,965,126
Southern Pacific System	14,468,078	15,224,493	15,177,500	14,533,915	12,979,359	12,015,250	10,765,472	9,171,233	7,698,470	7,017,061	119,050,831
Northern Pacific System	7,923,974	8,521,842	5,704,227	6,111,614	5,265,019	4,274,074	4,056,796	3,456,813	2,496,037	2,456,212	50,266,608
Atchison, Topeka & Santa Fe System	13,931,201	14,416,481	11,820,770	10,975,352	11,132,597	10,253,835	8,788,611	8,094,934	6,445,749	5,408,807	101,268,337
Great Northern System	6,182,065	7,929,788	5,807,681	4,970,055	3,879,221	3,233,684	3,220,100	2,822,828	2,447,827	2,190,144	42,683,393
Denver & Rio Grande System	3,631,176	3,248,594	2,985,196	2,607,568	2,055,673	1,950,554	1,975,186	1,754,821	1,119,161	969,633	22,297,562
Canadian Pacific System	13,942,963	11,232,724	10,982,668	8,880,152	7,847,331	6,990,083	5,351,892	4,415,144	3,483,685	3,351,312	76,477,954
Average mileage operated during year:											
Union Pacific System	6,165.86	5,973.75	5,851.77	5,710.75	5,549.50	5,542.43	5,956.89	5,908.78	5,823.60	5,734.42	58,217.75
Southern Pacific System	9,919.49	9,752.52	9,523.57	9,458.12	9,053.25	8,900.56	8,718.02	8,658.64	8,546.27	8,044.07	90,574.51
Northern Pacific System	5,941.12	5,904.21	5,845.67	5,787.75	5,678.47	5,632.76	5,512.99	5,291.89	5,355.27	5,123.16	56,073.29
Atchison, Topeka & Santa Fe System	10,045.52	9,558.29	9,472.63	9,399.14	9,260.28	9,117.41	8,789.04	8,682.82	8,261.08	7,723.21	90,309.42
Great Northern System	6,900.21	6,660.41	6,233.16	6,145.58	5,947.99	5,776.88	5,639.69	5,426.63	5,447.23	5,390.46	59,568.24
Denver & Rio Grande System	2,764.35	2,774.64	2,680.20	2,729.69	2,633.79	2,578.75	2,558.12	2,527.74	1,853.63	1,837.12	24,938.03
Canadian Pacific System	14,064.46	12,260.92	12,118.24	11,627.98	11,185.55	10,764.73	10,105.03	9,871.83	9,735.00	9,584.01	111,317.75

[1] The classification of operating expenses became effective July 1, 1907.

Average per year of aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line:*

Union Pacific System	$2,329
Southern Pacific System	2,807
Northern Pacific System	2,203
Atchison, Topeka & Santa Fe System	2,305
Great Northern System	1,804
Denver & Rio Grande System	1,799
Canadian Pacific System	1,518

UNION PACIFIC SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]			
1908[1]	$7,718,845	$7,439,787	6,165.86
1907	9,420,565	8,291,396	5,973.75
1906	10,226,241	7,877,469	5,851.77
1905	10,055,216	7,159,256	5,710.75
1904	7,469,173	6,910,141	5,549.50
1903	6,630,019	6,137,848	5,542.43
1902	5,384.307	6,048,718	5,956.89
1901	6,035,122	4,582,899	5,908.78
1900	5,535,836	4,488,294	5,823.60
Total	4,134,821	4,029,318	5,734.42
	72,610,145	62,965,126	58,217.75

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line*..... $2,328.76

SOUTHERN PACIFIC SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]			
1908[1]	$14,579,923	$14,468,078	9,919.49
1907	17,889,761	15,224,493	9,752.52
1906	16,301,811	15,177,500	9,523.57
1905	16,913,403	14,533,915	9,458.12
1904	13,801,133	12,979,359	9,053.25
1903	12,151,031	12,015,250	8,900.56
1902	12,926,544	10,765,472	8,718.02
1901	11,951,676	9,171,233	8,658.64
1900	10,002.763	7,698,470	8,546.27
Total	8,679,229	7,017,061	8,044.07
	135,197,274	119,050,831	90,574.51

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line*..... $2,807.06

NORTHERN PACIFIC SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]			
1908[1]	$7,986,975	$7,923,974	5,941.12
1907	9,126,652	8,521,842	5,904.21
1906	9,260,329	5,704,227	5,845.67
1905	7,660,220	6,111,614	5,787.75
1904	7,491,603	5,365,019	5,678.47
1903	6,751,412	4,274,074	5,632.76
1902	7,362,602	4,056,796	5,512.99
1901	6,976,986	3,456,813	5,291.89
1900	5,387,303	2,496,037	5,355.27
Total	5,276,573	2,456,212	5,123.16
	73,280,655	50,266,608	56,073.29

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, per mile of line $2,203.32

ATCHISON, TOPEKA AND SANTA FE SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]			
1908[1]	$12,991,302	$13,931,201	10,045.52
1907	14,522,313	14,416,481	9,558.29
1906	15,497,552	11,820,770	9,472.63
1905	13,176,473	10,975,352	9,399.14
1904	11,989,627	11,132,597	9,260.28
1903	9,656,717	10,253,835	9,117.41
1902	9,694,162	8,788,611	8,789.04
1901	6,468,901	8,094,934	8,682.82
1900	6,485,172	6,445,749	8,261.08
Total	6,393,158	5,408,807	7,723.21
	106,875,377	101,268,337	90,309.42

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line* $2,304.78

GREAT NORTHERN SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]	$9,804,689	$6,182,065	6,900.21
1908[1]	10,062,691	7,929,788	6,660.41
1907	8,207,139	5,807,681	6,233.16
1906	6,611,207	4,970,055	6,145.58
1905	5,716,961	3,879,221	5,947.99
1904	5,205,750	3,233,684	5,776.88
1903	5,401,555	3,220,100	5,639.69
1902	4,829,988	2,822,828	5,426.63
1901	4,512,272	2,447,827	5,447.23
1900	4,425,883	2,190,144	5,390.46
Total	64,778,225	42,683,393	59,568.24

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment *per mile of line* $1,804.01

DENVER & RIO GRANDE SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30—	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]	$2,684,302	$3,631,176	2,764.35
1908[1]	2,416,665	3,248,594	2,774.64
1907	2,488,004	2,985,196	2,680.20
1906	2,557,963	2,607,568	2,729.69
1905	2,092,167	2,055,673	2,633.79
1904	2,256,611	1,950,554	2,578.75
1903	2,375,811	1,975,186	2,558.12
1902	2,568,234	1,754,821	2,527.74
1901	1,644,217	1,119,161	1,853.63
1900	1,478,228	969,633	1,837.12
Total	22,562,202	22,297,562	24,938.03

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line* $1,798.85

CANADIAN PACIFIC SYSTEM.

Recapitulation of statement showing maintenance of way and structures, maintenance of equipment, etc.

Year ending June 30.	Maintenance of way and structures.	Maintenance of equipment.	Average mileage operated during year.
1909[1]	$12,834,356	$13,942,963	14,064.46
1908[1]	12,476,130	11,232,724	12,260.92
1907	12,439,094	10,982,668	12,118.24
1906	10,928,261	8,880,152	11,627.98
1905	10,004,690	7,847,351	11,185.55
1904	8,372,113	6,990,083	10,764.73
1903	8,241,854	5,351,892	10,105.03
1902	6,813,433	4,415,144	9,871.83
1901	5,443,681	3,483,685	9,735.00
1900	4,942,521	3,351,312	9,584.01
Total	92,496,133	76,477,954	111,317.75

[1] The classification of operating expenses became effective on July 1, 1907.

Aggregate expenditures for ten years for maintenance of way and structures and maintenance of equipment, *per mile of line*..... $1,517.94

Cross-examination by Mr. DUNNE:

Q. I call your attention to the first exhibit that was offered in evidence on your examination, the statement with reference to the Oregon Railroad & Navigation Company. What ocean and river steamers are involved in that exhibit?

A. The exhibit was prepared from the statement of miscellaneous income, as called for by the annual report form, but details respecting the exact lines represented were not required by that form during those years.

Q. Do you know what ocean and river steamers are involved in that exhibit?

A. I do not.

Q. Do you know what quantities in that exhibit are assignable to ocean steamers, and assignable upon the other hand to river steamers?

A. I do not.

8277 Q. Do you know what quantities in that exhibit are assignable upon the one hand to transcontinental business moving by ocean or river steamer, and business not transcontinental moving by either of those vehicles of transportation?

A. I do not.

Q. Do you know what data go to make up the ultimate item "Gross Income?"

A. I do not; no detail furnished.

Q. Do you know what data go to make up the ultimate item "Expenses?"

A. No, sir.

Q. I call your attention to the second exhibit. As I understand you, the records from which that exhibit was compiled are reports to the Interstate Commerce Commission. Am I correct in so understanding you?

A. You are.

Q. I notice in the detail attached to that exhibit for the Southern Pacific Company, a list of various companies or lines. Do you know anything about the geographical location or the actual mileage of each and every one of those companies?

A. Do you mean in detail?

Q. I have mentioned in detail. I have mentioned one detail, geographical location; another detail, actual mileage. What is the state of your knowledge as to those two points of detail in respect to each of the companies listed here by you in this detail?

A. It is incomplete, in detail.

Mr. SEVERANCE. How is that?

WITNESS. As to the exact detail of the actual, physical location. I can determine it by states.

Mr. SEVERANCE. You get these figures from the reports, don't you?

WITNESS. Yes.

8278 Q. What do you mean by the expression in that detail, "California Northwestern Railway, Lessee?"

A. As I remember that report, it was a report of the operation of certain mileage leased to a party—I don't remember the name.

Q. How much mileage?

A. The average mileage operated during——

Q. I am speaking now of the California & Northwestern Railway; you said certain mileage was leased. I want to know how much mileage was leased.

A. About 90 miles.

Q. Between what points?

A. I don't know.

Q. You give certain data in respect to the California Northwestern Railway for the year ending June 30, 1906, and June 30, 1907. I find no data in your statement for the year ending June 30, 1909, and the year ending June 30, 1908. Why was that?

A. As you will notice by foot-note No. 4, it states that the figures for 1907 for the California & Northwestern lines were for the six months ending December 31, 1906, consolidated with certain other companies forming the Northwestern Pacific Railway.

Q. What companies composed the Northwestern Pacific?

A. I think I can get that out of a report I have of the Interstate Commerce Commission.

Q. Does it appear in the exhibit before you?

A. No, sir.

Q. Do you know whether the Northwestern Pacific was a Southern Pacific property?

A. Subsequent to 1907?

Q. From the very inception of its existence as a consolidated corporation?

A. I do not.

Q. The mileage of the California Northwestern embraced in the data exhibited upon your statement was how much?

A. Do you mean of the railway itself—the two combined?
8279 Q. I beg your pardon; I didn't catch what you said.
A. Do you mean the two sections combined?

Q. No, I call your attention to a specific item in your exhibit—California Northwestern Railway, and I ask you if you are able to state the actual physical mileage to which the arithmetical expressions related to that company are assigned.

A. In 1907, 20.03 miles.

Q. And in 1906 how many miles?

A. 40.06.

Q. Did I understand you to say in respect to the California Northwestern Railway, Lessee, so described in your statement, that the actual mileage to which these arithmetical expressions are assigned was 90 miles?

A. That mileage, as I stated it, was the average mileage put upon a yearly basis. As I stated, the report was for six months, the first six months of the year, so that in aggregating all the data of the system for the year I only used one-half of the mileage actually operated.

Q. How much mileage did you use?

A. 88.87 for 1907.

Q. For the California Northwestern Railway, Lessee?

A. Yes, sir.

Q. Take the Maricopa & Phoenix and Salt River Valley Railroad. What was the physical mileage to which your quantities are addressed in this statement?

A. 42.51 miles.

Q. And the North Shore Railroad, what was the mileage from the same point of view?

A. 45.25.

Q. The Maricopa & Phoenix Railway Company, what was the physical mileage to which these quantities are pointed?

A. Can you designate the year?

Q. 1909 and 1908.

A. 1909, 45.64; 1908, 43.26.

Q. What is the physical mileage assignable to the Inde-
8280 pendence & Monmouth Railway mentioned in your list?
A. 1909, 18.80.

Q. And the physical mileage of the North Shore road?

A. 1907 was the last appearance of that road, and it is 45.25, on the same basis as the California Northwestern line.

Q. What was the mileage of the Phoenix & Eastern Railway Company? I have a dim recollection of having heard of that road the other day.

A. 1909, 95.26.

Q. And in 1908 what was it?

A. 95.26.

Q. Take the Lake Charles & Northern Railroad Company. What is the physical mileage assignable to that road?

A. From the same basis as I explained in reference to the California & Northwestern, the average mileage used was 44.48.

Q. When did that road begin operations?

A. October 25, 1908.

Q. The Arizona & Colorado Railroad Company, what was the mileage of that road?

A. In 1909, 35.35.

Q. The Coos Bay, Roseburg & Eastern Railroad & Navigation Company.

A. In 1909, 31.46.

Q. The Corvallis & Eastern?

A. In 1909, 140.58.

Q. And the Gila Valley, Globe & Northern.

A. In 1909, 125.41.

Q. Referring to the Union Pacific: what is the mileage of the Ilwaco Railroad, which is listed under the Union Pacific?

A. In 1909, 28.65.

Q. And of the Oregon & Washington Railroad Company, similarly listed.

A. On the same basis as the one I described for the California Northwestern, 3.05.

Mr. SEVERANCE. Explain a little more fully what you mean by "On the same basis."

8281 WITNESS. That the report as rendered covered the operations for the six months ending June 30, 1909, and in assembling aggregate data for the system for the full year I used one-half of the mileage operated at the close of the year.

Q. Basing on a six-months report?

A. Yes, sir; the operations covering six months.

Q. The Oregon, Washington & Idaho Railroad Company, the mileage for that.

A. 72.03.

Q. Did you make any comparisons with the annual reports of the Union Pacific and the Southern Pacific to the stockholders?

A. Only in a general way.

Q. Are you prepared to say that precisely the same companies and all the same companies are included in the annual reports to the stockholders of the Union Pacific and Southern Pacific companies, respectively, as you have included in your showing?

A. I am not.

Q. Have you any knowledge as to whether the methods of the various railroads listed in your exhibits are absolutely identical in respect to their methods of accounting?

A. I would assume that they were.

Q. Well, is that a mere assumption upon your part as distinguished from any knowledge?

A. They fall within the classifications prescribed.

Q. Well, you are assuming it; you are not speaking of actual knowledge upon the subject, are you?

A. There might be a question of jurisdiction of the Interstate Commerce Commission.

Q. I am looking at this thing not from the legal but from an accounting point of view. I asked you whether you are prepared to say that the methods of these various companies are identical
8282 in respect to their accounting so far as the showing in your exhibits is concerned?

A. Not having examined anything but the annual reports as filed, I cannot say positively.

Q. For instance, can you say that as among all of these companies listed in the exhibits the method of accounting in respect of the depreciation of the equipment is identical?

A. I cannot.

Q. Have you any knowledge of your own as to the relative classification of freight carried upon these various lines?

A. Do you mean as to the nature of the freight?

Q. As to the quality and quantity of the articles of freight carried respectively by these various lines.

A. My knowledge does not extend that far.

Q. Do you know what the ratio of carrying capacity to dead weight of refrigerator cars, for instance, would be as compared with box cars?

A. No, sir.

Q. Do you know anything about the westbound movement of refrigerator cars with respect to quantity of load?

A. No, sir.

Mr. SEVERANCE. Mr. Dunne, he stated that his knowledge is confined to what is shown on the reports. He has not attempted to use his own knowledge for anything—only such information as the reports convey.

Mr. DUNNE. I know his testimony has been rather attenuated, but he may know something about some of these things.

Mr. SEVERANCE. He is simply an official over there in Washington who has taken the figures from the annual reports and shows what they are. I do not think his testimony should be characterized as attenuated, or in any such way.

8283 Mr. DUNNE. "Attenuated" is not unpleasant—it is the next door to "spiritualized."

Q. Now, do you know anything about the length of haul of these various companies—the average length of haul?

A. The reports would show that item, but I don't carry it in my head.

Q. Do you know anything about the average haul upon the Southern Pacific Company, for example, during the interval between 1901 and 1909?

A. The same answer would apply.

Q. You don't know that?

A. The reports would show it.

Q. Can you tell us as between 1901 and 1909 whether there was not an actual falling off in the earnings per ton upon the Southern Pacific Company? Do you know anything about that?

A. You refer to the average receipts per ton?

Q. I refer to the earnings per ton—not speaking of the ton mile rate.

A. No, sir. I have no information about that.

Q. I omitted to ask you whether you are able to express to us the average haul of the Union Pacific as between 1909 and earlier years, say, 1908.

A. The annual reports would reveal this figure.

Mr. SEVERANCE. You have not those annual reports with you, here?

WITNESS. No, sir.

Mr. SEVERANCE. They are on file in Washington?

WITNESS. Yes.

Q. You have mentioned various roads here—the Great Northern and the Northern Pacific, for instance; I think you even went outside of the United States to get a road—the Canadian Pacific. Now take the Great Northern. Do you know to what extent the
8284 Great Northern carries Grain and Ore tonnage, and carried it during the periods mentioned in these exhibits?

A. The ratio of those commodities to the total tonnage reported as carried would be shown in the annual reports.

Q. You have no expression of it here?

A. Not in these exhibits.

Q. Do you know to what extent freight cars are loaded, as to being fully loaded, with commodities of that description?

A. No, sir.

Q. Can you tell us what percentage grain and ore would average of the total tonnage for instance of the Great Northern or the Northern Pacific upon the one hand and upon the other the total tonnage of the Union Pacific or the Southern Pacific?

A. If I understand your question, that same ratio would be expressed in the annual reports.

Q. You have no expression of it available here?

A. No, sir.

Q. Do you know anything about the governmental relations of the Canadian Pacific in respect to pecuniary subventions and reliefs?

Mr. SEVERANCE. I object to that as immaterial. Speaking of being "attenuated," I think the cross-examination is getting a little "attenuated."

Mr. DUNNE. I think it is a very proper question, since you migrated into Canada.

A. I do not.

Q. The Santa Fe has considerable mileage in the territory east of Kansas City, has it not? I notice that one of the factors in your exhibits is mileage.

A. Actual location of the mileage is not shown in detail.

Q. From your general knowledge, connected as you are with
8285 the Interstate Commerce Commission, you know, do you not, that the Santa Fe has a good deal of mileage east of Kansas City?

A. Yes, sir.

Q. And do you know whether the operating cost is lower in that region than in the regions farther west—from your general knowledge as a member of the Interstate Commerce Commission staff?

A. I do not.

Q. From your general knowledge as a member of the Interstate Commerce Commission staff, could you give us any expression of the relative percentages of total traffic in respect to grain, coal, stone, sand, cement, brick and lime obtaining upon the Southern Pacific Company on the one hand, and on the Santa Fe System upon the other, during the years comprehended in these exhibits?

A. Those items are part of those called for in the annual report.

Q. You have no expression here?

A. No, sir.

Q. Now, with respect to the ton mile rates here for the Southern Pacific Company. Was there any difference in the expression of the data from which those results are derived between the period prior to and including 1904 and the subsequent period, so far as those data exist in the sources from which you have compiled these exhibits?

A. Yes, sir; I think there was.

Q. What was that difference?

A. If I may go to my valise for a minute——

Q. Before you get the arithmetical expressions, if that is what you are after, what was the principle underlying the difference?

Mr. SEVERANCE. If you have some memorandum to refresh
8286 your recollection, go and get it.

WITNESS. It is not figures; it is a memorandum of certain notations made in the annual report respecting tonnage carried.

Q. All right, if that will assist you to answer the question.

(Witness refers to memoranda.)

Q. In order to shorten this matter, I am of the impression that our minds do not meet, and I will put the question to you a little more concretely. Isn't it a fact that during the period prior to and including 1904, the tonnage reported by the Southern Pacific to the Interstate Commerce Commission and the data from which the ton mile rate was arrived at, included company freight as well as commercial freight, whereas since 1904 company freight was omitted?

A. You speak of the Southern Pacific Company itself?

Q. Yes.

A. Or as generalized for the whole system?

Q. Take the Southern Pacific Company.

A. In its report for 1904, the page calling for traffic statistics, as well as the detail of commodities, apparently included some three million and a half tons of freight marked "Company."

Q. Don't you know, Mr. Peter, or do you carry it in your mind as a matter of your general information as an attaché of the Interstate

Commerce Commission, that up to and including 1904 the Southern Pacific Company reported company freight, charging a very low rate for the movement thereof, and that after 1904 that was discontinued and the report was confined exclusively to commercial freight? Do you know that as a matter of general information?

A. As to the lowness or highness of the rate I can make no
8287 answer. My memorandum shows that apparently was the case so far as the inclusion of tonnage was concerned.

Q. Are you able to say in respect to operating expenses whether the methods followed by the various lines listed in your exhibits were identical as to the items included in operating expenses?

A. I am not able to state.

Q. Are you able to state whether any of the lines mentioned in your exhibits—take the Hill lines, the Great Northern and the Northern Pacific, and also the Santa Fe,—during the years mentioned in your exhibits, or any of these years, charged into operating expenses, arbitrarily, year by year, large sums for depreciation on existing equipment?

A. I am not able to state.

Q. Are you aware of the fact that no such charge was made by the Union Pacific and Southern Pacific during any of these years?

A. I have no information on that point.

Q. Do you know in respect to the various lines listed in these exhibits, whether the transportation charges were made up in the same way for each of these lines and for each of these years?

A. I cannot answer.

Mr. SEVERANCE. What is your answer?

WITNESS. I cannot state whether they were or not.

Q. Do you know whether in the years 1908 and 1909, and pursuant to a regulation of the Interstate Commerce Commission, a new division of operating expenses was erected, entitled "Traffic Expenses," which were formerly included under the head of "Transportation Expenses?"

A. Yes, sir.

Q. In the earlier years listed in your exhibits, did you not include these traffic expenses, while in the later years you
8288 withdrew them from the transportation expenses?

A. The item named "Transportation Expenses," represents the amount shown as reported under that head. The foot-note appended to it for 1908 and 1909 states that the classification in question became effective so as to cover those two years.

Q. If there was such a regulation did you pursue it in making these computations?

A. For the previous years?

Q. And the subsequent years.

A. I had no basis on which to make any combination of figures.

Q. If pursuant to a regulation of the Commission the so-called traffic expenses for the years antedating 1907 were included in trans-

portation expenses, and were subsequently to 1907 made assignable to another category, then for the years succeeding 1907 these traffic expenses were not included in the transportation expenses, were they?

A. They were not.

Q. Do you know whether the item of the hire of equipment did not constitute a heavy debit with the Southern Pacific and the Union Pacific, or either of them, amounting to several millions of dollars up to and including 1908 and 1909?

A. That item is also a feature of the annual report.

Q. Well, apart from the amount of the item, do you know whether any regulation as to location of that item was established by the Interstate Commerce Commission, as to whether it was taken out of one category and moved into another?

A. Yes, sir. The classification mentioned in the foot-note would cover that point, the item in question being transferred to income account.

Q. To what?

A. To income account.

Q. From transportation? It was taken out of transporta-
8289 tion, was it not, and transferred to income account?

A. As I remember, it was an item of transportation prior to 1907.

By Mr. SEVERANCE:

Q. Just two or three questions. Mr. Dunne seemed not quite to understand how you happened to pick out the particular railroads that were selected. You made up these figures on the roads that I requested, did you not?

A. I did.

Q. You neither added to that request nor subtracted from it, did you?

A. No, sir.

Q. And these are the lines that are commonly spoken of as the transcontinental lines, aren't they?

A. Yes, sir.

Q. Now, the counsel has asked you a great many questions as to things that appear in some way on the annual reports, and some things that do not appear, as I understand it. Your only source of information in making up these figures was the annual reports filed with the Commission; is that true?

A. Yes, sir.

Q. And as to the correctness of those reports, except that they are furnished under oath, you know nothing, do you?

A. That is correct.

Q. Counsel asked you if it was not a fact that on the Southern Pacific up to 1904 the Company's material had been included, and since then cut out. When was it first cut out—in the report of 1905 or 1906, if your memoranda shows that?

Mr. DUNNE. 1904 I think is the last.

A. 1904 is the last report in which any memorandum relative to that fact appears.

Q. That is the Southern Pacific, is it?

A. Yes, sir.

Mr. SEVERANCE. That question, then, Mr. Dunne, was not addressed to any line except the Southern Pacific?

8290 WITNESS. Southern Pacific.

Mr. DUNNE. I pointedly told him so in the question.

Q. Now, the matter of mileage is shown. Is this average mileage of the different lines shown upon the annual reports?

A. Yes, sir.

Q. That is one of the items that is reported, isn't it,—average mileage operated?

A. Yes, sir. But I may add that in several cases where the report was for less than a full year, the road from its standpoint, it being a single reporting carrier, may have considered that its ratio as based upon that average would be more correctly stated by using the full mileage operated, the fact that it was for less than a full year being indicated by the fact that the report was for less than a full year. So, where that fact existed, in order to make the returns consistent, I used an average which on the basis of the other reports would represent the average mileage operated as reflected in the other side of the equation.

Q. Which were the earnings, and all of them?

A. Yes.

Q. You explained that in answer to Mr. Dunne, I think?

A. Yes.

Q. How did you get the list of the subsidiary companies of the Southern Pacific and Union Pacific and these other lines?

A. That was taken for each of the years named from the Statistics of Railways in the United States, which is a publication of the Bureau.

Q. Of the Bureau?

A. Yes, sir. I will amend that by saying, of the Commission.

Q. You mean the Interstate Commerce Commission compiles each year a statement of that kind, that shows the subsidiary lines

8291 owned by the different companies?

A. Yes, sir, and the relationship between them.

Q. That is a publication of the Department?

A. Yes, sir.

Q. And from that you obtain the information as to the subsidiary lines belonging to the different systems?

A. Yes, sir.

An adjournment was then taken until the morning of Wednesday, April 6, 1910, at 10.30 o'clock.

8292 ROOM 720, CUSTOM-HOUSE,
NEW YORK CITY,
Wednesday, April 6, 1910, 10:30 A. M.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. Peter F. Dunne and Mr. N. H. Loomis.

CHARLES H. TWEED,

being duly sworn as a witness on behalf of the Complainant, in rebuttal, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Tweed, where do you reside?

A. City of New York.

Q. What is your profession?

A. I have retired from business; I was originally a lawyer.

Q. What relation, if any, did you ever have to the Southern Pacific Railroad?

A. I was its general counsel from the time of its organization.

Q. I should have said Southern Pacific Company.

A. Yes, the Southern Pacific Company. I was its general counsel from the time of its organization until 1900.

Q. Were you also vice-president?

A. I was vice-president during a portion of the year 1900. My recollection is that I became a vice-president in the spring or shortly after the spring election of 1900.

Q. Did you office anywhere near Mr. Huntington, the president of the Company?

A. Yes, my office was in the same corridor as his; there was
8293 an outside connection through the corridor, and an inside connection between his office and mine.

Q. How intimate were your business relations with Mr. Huntington so far as concerned the Southern Pacific Company?

A. Very intimate—as intimate as such relations would be.

Q. I direct your attention to a bit of testimony that was given on behalf of the defendants in this case, by Mr. Kahn, a member of the firm of Kuhn, Loeb & Company, in which he testified as follows, speaking of certain conferences between Mr. Huntington and Mr. Harriman. He said: "The Union Pacific was prepared to accept any reasonable arrangement which would have accomplished that purpose"—that was, to make definite and permanent their relations—"and which would suit Mr. Huntington, and among the ways thought of to accomplish it was the offer to purchase outright the Central Pacific and leave the rest of the system alone. Q. That is what I

wanted to get at. Who made that offer to Mr. Huntington? When was it made, and were you present when it was made? A. Mr. Harriman made that offer, and he made it more than once. Q. Was it ever made in your presence, Mr. Kahn? Mr. Harriman is dead and Mr. Huntington is dead, and that is the reason I am trying to find out whether this is merely something that was told you, or whether it is something you know of your own knowledge and was present when the offer was made. A. I was in daily contact with Mr. Harriman. I saw him after every important conference, and I saw him in conferences. Whether or not I was at the conference at which that particular proposition was made I could not swear. Q. You would not undertake to swear that such a proposition was ever made in your presence? A. No, I would not undertake to swear to
8294 that." Did any offer by Mr. Harriman to Mr. Huntington to purchase the Central Pacific line ever come to your knowledge, Mr. Tweed?

A. I have no recollection of such an offer having come to my knowledge.

Q. Now, Mr. Tweed, you were one of the executors, were you not, of Mr. Collis P. Huntington?

A. Yes.

Q. Did you qualify as such executor?

A. I did.

Q. I will call your attention to Complainant's Exhibit 217. I will ask you if that is a copy of Mr. Huntington's will?

A. It is.

Q. That is a copy of the will as it was filed, allowed, approved, and executed?

A. Yes.

Mr. SEVERANCE. I will offer Defendants' Exhibit 217 in evidence.

Mr. DUNNE. I object to the exhibit as incompetent. I am objecting to the contents and not to the form.

Mr. SEVERANCE. The record may show that you consent that this copy be used with the same force and effect as though an exemplified copy were produced, certified by the Probate Court?

Mr. DUNNE. Certainly. The objection is addressed to the subject-matter, not to the form.

Q. Will you kindly turn to the subdivision of the will that provides for the disposition of the stock of the Southern Pacific Company that might be owned by Mr. Huntington at his death? Which subdivision is it?

A. Subdivision Eighth.

Q. Briefly, that subdivision gives the stock to H. E. Huntington and Mrs. Huntington, widow of C. P. Huntington, the portion of one-third to H. E. Huntington and two-thirds to the widow, does it not?

A. That is correct.

8295 Q. Do you recall the circumstance of the stock of the Southern Pacific Company being sold after Mr. Huntington's death?

A. It was sold in January or February, 1901.

Q. Was that sold by the executors, or was it sold by the beneficiaries, under this clause?

A. It was sold by the beneficiaries, Mrs. Huntington and Mr. H. E. Huntington.

Q. Were the negotiations for the sale of that stock with the beneficiaries, or their representatives, or with the executors?

A. With the beneficiaries.

No cross-examination.

Complainant's Exhibit 217 (Tweed) is as follows:

COMPLAINANT'S EXHIBIT 217.

(Tweed)

I, Collis P. Huntington, of the City of New York, in the state of New York, do hereby make, publish and declare this to be my last Will and Testament, that is to say:

First: I direct my executrix and executors, or such of them as may qualify, and the survivors or survivor of them, to pay all my just debts and my funeral and testamentary expenses as soon as practicable after my decease.

Second: I give and bequeath all my furniture and household articles, plate, watches, jewelry, bric-a-brac and books, and all my horses, carriages, harnesses and articles used in my stable, to my wife Arabella D. Huntington, for her own use and benefit absolutely.

I give and bequeath all pictures belonging to me at the time of my death to my wife Arabella D. Huntington for and dur-
8296 ing her life, and upon her death, or upon my death, if I should survive her, to my son Archer Milton Huntington for and during his life, and upon the death of the said Archer Milton Huntington, if he should survive me and should also survive my said wife, or upon the death of my wife Arabella D. Huntington, if she should survive me and should also survive the said Archer Milton Huntington, or upon my death if I should survive the said Arabella D. Huntington and the said Archer Milton Huntington, to the Metropolitan Museum of Art of the City of New York absolutely.

I will and direct that neither the said Arabella D. Huntington nor the said Archer Milton Huntington shall be required to give any bonds or security upon or for or in connection with her or his use, during her or his lifetime, of the pictures above referred to or any part thereof, but that each of them shall be permitted freely to possess, use and enjoy the same during her or his lifetime without giving any bonds or security therefor or in respect thereof.

Third: I give, devise and bequeath the plot of land at the corner of Fifth Avenue and Fifty-seventh Street in the City of New York, seventy-five feet five inches on Fifth Avenue and one hundred and seventy-five feet on East Fifty-seventh street, including the southerly extension thereof about twenty-five feet by fifty feet, together with

the house now erected thereon, and all fixtures appertaining thereto as the same may exist at the time of my death, as follows:

To my wife Arabella D. Huntington for and during her life; upon her death, or upon my death if I should survive her, to my son
8297 Archer Milton Huntington for and during his life; upon the death of the said Archer Milton Huntington if he should survive me and should also survive my said wife, or upon the death of my wife Arabella D. Huntington if she should survive me and should also survive the said Archer Milton Huntington, or upon my death if I should survive the said Arabella D. Huntington and Archer Milton Huntington, to the lawful issue of the said Archer Milton Huntington then living, absolutely and in fee simple in equal parts and shares *per stirpes* but not *per capita*. In case there should be no lawful issue of said Archer Milton Huntington, then living, I give, devise and bequeath the same to Yale College absolutely and in fee simple, in case it shall be legally entitled to take the same; in case it shall not be legally entitled to take the same, I will and direct that the same shall be sold by my executors or such of them as may qualify, or the survivor of them, either at public or private sale, upon such terms as to them may seem desirable either for cash or on credit or partly cash and partly credit, and the net proceeds of the sale thereof to be paid over to said Yale College absolutely.

I will and direct that neither the said Arabella D. Huntington nor the said Archer Milton Huntington shall be required to give any bonds or security upon or for or in connection with her or his use, during her or his lifetime, of the property in this clause of my Will referred to, or any part thereof, but that each of them shall be permitted freely to possess, use and enjoy the same during her or his lifetime without giving any bonds or security therefor or in respect thereof.

Fourth: If I should be the owner thereof at the time of
8298 my death, I give and devise to my sister Elizabeth Purdy, the parcel or lot of ground in Oneonta, Otsego County, New York, on which she now resides, with the dwelling house and other buildings thereon, to have and to hold to her as her separate estate during her lifetime, and upon her death I give and devise the same to her daughter Eleonora Loveland absolutely in fee simple.

Fifth: In case the said Arabella D. Huntington or the said Archer Milton Huntington should survive me, I give and bequeath to the Union Trust Company of New York the sum of Five hundred thousand dollars, or if my executors, or such of them as may qualify, should so determine, railroad or other securities to be selected by my said executors, or such of them as may qualify, out of my estate, to the amount, taken at their par value, of said sum of Five hundred thousand dollars, to have and to hold the same to said Trust Company and its successors, as Trustees, upon the trusts following that is to say: To invest, reinvest and keep invested the said money or to retain the said securities in its possession or to sell and dispose of the same and invest, reinvest and keep invested the proceeds thereof, and re-

ceive the interest, dividends and other income thence arising, and, after paying from the income of said estate all necessary taxes and other proper disbursements and charges incident to said trust and trust estate, to apply the net residue of such interest, dividends and other income to the use of my wife Arabella D. Huntington during her life, and upon her death, or upon my death in case I should survive her, to apply the net residue of such interest, dividends and other income to the use of the said Archer Milton
8299 Huntington during his life, and upon the death of the survivor of the said Arabella D. Huntington and Archer Milton Huntington, to pay, deliver over and transfer absolutely the capital of said trust estate to and among the lawful issue of the said Archer Milton Huntington then living, in equal parts and shares *per stirpes* but not *per capita*, but in case no lawful issue of the said Archer Milton Huntington should survive the said Arabella D. Huntington and Archer Milton Huntington then I will and direct that the said trust estate should fall into and become a part of the residue of my estate and be dealt with accordingly.

Sixth: In case the said Archer Milton Huntington should survive me, I give and bequeath to said Union Trust Company of New York the sum of Two hundred and fifty thousand dollars in money, or, if my executors, or such of them as may qualify, should so determine, railroad or other securities to be selected by my said executors or such of them as may qualify, out of my estate, to the amount taken at their par value of the said sum of Two hundred and fifty thousand dollars to have and to hold the same to said Trust Company and its successors as Trustees, upon the trusts following that is to say: To invest, reinvest and keep invested the said money or to retain the said securities in their possession, or to sell and dispose of the same, and invest, reinvest and keep invested, the proceeds thereof, and receive the interest, dividends or other income thence arising, and after paying from the income of the said trust estate all necessary taxes and other proper disbursements and charges incident to said trust and trust estate, to apply the net residue of such interest,
8300 dividends and other income to the use of the said Archer Milton Huntington during his life, and upon his death to pay, deliver over and transfer absolutely the capital of the said trust estate to and among the lawful issue of said Archer Milton Huntington then living, in equal parts and shares *per stirpes* but not *per capita*. But in case no lawful issue of the said Archer Milton Huntington should then be living, I will and direct that the said trust estate should fall into and become a part of the residue of my estate and be dealt with accordingly.

Seventh: In case my daughter Clara Elizabeth, Princess Hatzfeldt, should survive me, I give and bequeath to said Union Trust Company of New York, the sum of One million dollars in money, or if my executors or such of them as may qualify should so determine, railroad or other securities to be selected by my said executors or such of them as may qualify, out of my estate, to the amount

taken at their par value, of the said sum of One million dollars, to have and to hold the same to the said Trust Company and its sucessors as Trustees, upon the following trusts that is to say: To invest, reinvest and keep invested the said money, or to retain the said securities in their possession or to sell and dispose of the same and invest, reinvest and keep invested the proceeds thereof, and receive the interests, dividends and other income thence arising, and after paying from the income of the said trust estate all necessary taxes and other proper disbursements and charges incident to said trust and trust estate, to apply the net residue of such interest, dividends and other income to the use of said Clara Elizabeth, Princess
8301 Hatzfeldt during her life, and upon her death, leaving lawful issue her surviving, to pay, deliver over and transfer absolutely the capital of the trust estate set apart for her benefit hereunder to and among her said issue in equal parts and shares *per stirpes* but not *per capita*. But in case the said Clara Elizabeth, Princess Hatzfeldt, should die, leaving no such issue her surviving, then upon her death to pay, deliver over and transfer the capital of such trust estate to such persons and parties and in such parts and proportions as said Princess Hatzfeldt by her last will and testament, or by an instrument in the nature of a last will and testament executed by her in the presence of at least two witnesses shall have directed and prescribed. Unless otherwise disposed of as hereinbefore prescribed, the capital of such trust estate shall fall into and become a part of the residue of my estate and be dealt with accordingly.

Eighth: I will and direct that all shares of the capital stock of the Southern Pacific Company which may belong to me at the time of my death shall, subject to the terms and conditions hereinafter expressed, be dealt with and disposed of as follows, viz: In case my wife Arabella D. Huntington shall survive me, I give and bequeath to her two-thirds part of all such shares, and the remaining one-third part thereof to my nephew Henry Edwards Huntington, or in case he should not survive me, to his son Howard Huntington. In case my wife Arabella D. Huntington should not survive me, then I give and bequeath one-half part of all such shares to my son Archer Milton Huntington, or, in case he should not survive me, to the lawful issue of the said Archer Milton Huntington living
8302 at the time of my death, in equal parts or shares *per stirpes* but not *per capita*, and the remaining one half part thereof to my nephew, Henry Edwards Huntington, or in case he should not survive me, to his son Howard Huntington. In case neither the said Henry Edwards Huntington nor the said Howard Huntington shall survive me, then I give and bequeath all shares of the capital stock of the Southern Pacific Company belonging to me at the time of my death to my wife Arabella D. Huntington if she should survive me, or if she should not survive me, then to my son Archer Milton Huntington, but if neither the said Arabella D. Huntington nor the said Archer Milton Huntington should survive me, then to the

lawful issue of the said Archer Milton Huntington living at the time of my death in equal parts or shares *per stirpes* but not *per capita.*

The foregoing bequests of capital stock of the Southern Pacific Company are made upon and subject to the following terms, provisions and conditions that is to say: In case the said Henry Edwards Huntington and either the said Arabella D. Huntington or Archer Milton Huntington should survive me, the shares so bequeathed to said Henry Edwards Huntington and to the said Arabella D. Huntington or Archer Milton Huntington shall not, nor shall any part thereof, be sold or disposed of during the lifetime of either of the legatees who may have so become entitled to receive the same except with the consent of both such legatees or of the survivor of them.

I would suggest to the said Henry Edwards Huntington and Arabella D. Huntington and Archer Milton Huntington, that sales of
8303 such portions of said stock as they may receive under the foregoing provisions of this my will shall not be made except *pro rata* or substantially *pro rata* with shares of stock of said Company belonging to the successors in interest of my former associates, Mark Hopkins, Leland Stanford and Charles Croker; but this suggestion is not to be in anywise legally or equitably operative or binding upon my legatees or to restrict in anywise their free action in dealing with such stock, but is merely made for the purpose of indicating the mode and manner in which I should have preferred to make sales of such stock if I had lived, and in which I should prefer that such sales be made after my death; but notwithstanding this suggestion the legatees of my said stock are to be at liberty to deal with the same according to their own judgment except as limited by the terms, conditions and limitations hereinbefore expressly prescribed in respect to sale or disposition thereof during the lifetime of the said legatees or the survivor of them.

Ninth: One half part of all the rest, residue and remainder of the property and estate, real, personal and mixed, which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise and bequeath absolutely and in fee simple as follows: To my wife Arabella D. Huntington, if she should survive me, but if she should not survive me, to my son Archer Milton Huntington, or if neither the said Arabella D. Huntington nor the said Archer Milton Huntington should survive me, then to the lawful issue of said Archer Milton Huntington living at the time of my death in equal parts and shares *per stirpes* but not *per capita.*

8304 Tenth: Out of the residue of my estate then remaining, I give and bequeath to said Union Trust Company of New York the sum of Two hundred and seventy thousand dollars ($270,000.) to have and to hold the same to said Trust Company and its successors, as Trustees, upon the following trusts, that is to say: To divide such sum into separate trust estates of the respective amounts hereinafter mentioned, and to set apart each of said separate trust estates for the benefit of the respective beneficiaries hereinafter mentioned, and to invest, reinvest and keep invested the said separate

trust estates, and to receive the interest, dividends and other income arising therefrom, and after paying and retaining from the income of the said several trust estates all necessary taxes and other proper disbursements and charges incident to said trusts and trust estates respectively, to apply the net residue of such interest, dividends and other income, and pay, deliver over and transfer the capital of such several trust estates as follows that is to say: The sum of Fifty thousand dollars shall be set apart as a separate trust estate, the net income whereof shall be applied to the use of Harriet S. Huntington, widow of my deceased brother, Solon Huntington, during her lifetime, and upon the death of the said Harriet S. Huntington the capital of such trust estate shall be paid and delivered over absolutely to her daughter Caroline D. Huntington, now Caroline D. Holladay.

The sum of Fifty thousand dollars shall be set apart as a separate trust estate, the net income whereof shall be applied to the use
8305 of my sister Elizabeth Purdy during her lifetime, and upon her death, to the use of her daughter Eleonora widow of Benjamin Loveland of Oneonta, New York, during her lifetime, and upon the death of the said Elizabeth Purdy and Eleonora Loveland, the capital of such trust estate shall be paid and delivered over to the issue of said Eleonora Loveland in equal parts and shares *per stirpes* but not *per capita*.

The sum of Fifty thousand dollars shall be set apart as a separate trust estate, the net income whereof shall be applied to the use of my sister Susan Porter during her lifetime, and upon her death the capital of such trust estate shall be paid over to and be divided to and among such persons and parties and in such parts and proportions as she by her last will and testament or an instrument in the nature of a last will and testament executed by her in the presence of at least two witnesses may have directed or prescribed.

The sum of Fifty thousand dollars shall be set apart as a separate trust estate, the net income whereof shall be applied to the use of my sister Ellen Gates during her lifetime, and upon her death, to the use of her husband Isaac E. Gates during his lifetime, and upon the death of the said Ellen Gates and the said Isaac E. Gates the capital of such trust estate shall be paid over and delivered to their daughter Helen M. Gates, now Helen M. Huntington, for her own use and benefit absolutely.

The sum of Thirty thousand dollars shall be set apart as a separate trust estate, the net income whereof shall be applied to the use of my nephew Collis H. Sammis during his lifetime, and upon his
8306 death, to the use of his widow during her lifetime, and upon the death of both such beneficiaries the capital of such trust estate shall be paid over and divided to and among the issue of said Collis H. Sammis then living.

The sum of Twenty thousand dollars shall be set apart as a separate trust estate the net income whereof shall be applied to the use of my niece Eleonora Loveland widow of Benjamin Loveland, of Oneonta, during her lifetime and upon her death the capital of such

trust estate shall be paid over and divided to and among her issue in equal parts and shares *per stirpes* but not *per capita*.

The sum of Twenty thousand dollars shall be set apart as a trust estate, the net income whereof shall be applied to the use of my nephew Frank Pardee, son of my sister Phoebe Pardee, during his lifetime, and upon his death to the use of his widow during her lifetime, and upon the death of both such beneficiaries, to pay over and divide the principal of said trust estate to and among their issue in equal parts and shares *per stirpes* but not *per capita*.

Eleventh: Out of such residue of my estate I give and bequeath the following specific legacies:

To my sister Susan Porter the sum of Twenty thousand dollars for her own use and benefit absolutely.

To my nephew Willard V. Huntington son of my brother Solon Huntington, the sum of Fifty thousand dollars for his own use and benefit absolutely.

To my nephews Edward H. Dunbar and George S. Dunbar, both of Torrington, Connecticut, the sum of Twenty thousand Dollars each, for his own use and benefit absolutely.

8307 To my nephew Edward H. Pardee, son of my sister Phoebe Pardee, the sum of one hundred thousand dollars for his own use and benefit absolutely.

To my niece Mary Pardee, daughter of said Phoebe Pardee, the sum of twenty thousand dollars for her own use and benefit absolutely.

To my niece Caroline D. Huntington (now Caroline D. Holladay) daughter of my said brother Solon Huntington, the sum of twenty thousand dollars for her own use and benefit absolutely.

To my niece Leonora, wife of Bradley F. Foster, of Huntington, West Virginia, the sum of twenty thousand dollars for her own use and benefit absolutely.

To my niece Adeline Dunbar, the sum of twenty thousand dollars for her own use and benefit absolutely.

To my niece Helen M. Huntington, daughter of my sister Ellen Gates, the sum of twenty thousand dollars for her own use and benefit absolutely.

To the said Isaac E. Gates the sum of one hundred thousand dollars for his own use and benefit absolutely.

To the widow of my deceased nephew Charles H. Pardee the sum of five thousand dollars for her own use and benefit absolutely.

To my friend Charles H. Tweed the sum of fifty thousand dollars for his own use and benefit absolutely.

In case any of the legatees above named for whom provision is made in this clause of my will, shall have died before my decease, leaving lawful issue, such issue shall take in equal parts and shares *per stirpes* but not *per capita*, the share which said legatee

8308 would have taken if living, and if any of them shall have died leaving no issue them surviving, then said legacy in such case shall lapse.

Twelfth. Out of the residue of my estate then remaining, I also give and bequeath to the Hampton Normal and Agricultural Institute, a corporation created by and existing under and in pursuance of the laws of the State of Virginia, and located at Hampton, Virginia, one hundred thousand dollars in railroad bonds or other securities at par, which at the time of delivery shall be interest-paying bonds or securities, to be selected by my said executors, or such of them as may qualify, out of my estate. This bequest shall be paid in twelve months after my decease or sooner if my executrix and executors, or such of them as may qualify, or the survivors or survivor of them shall think best, to the person who, when the same is paid, shall act as treasurer of the trustees of the said institute, and his receipt shall be a full and sufficient discharge of such executrix and executors. The sum so bequeathed is intended to be a part of the permanent fund of this institute. If there is no such fund said sum is to be used to constitute such fund and to be kept invested under the management and direction of the said board of trustees, and the income to be applied from time to time to the uses and purposes of said institute.

Thirteenth. Out of the said remainder of my estate I also give and bequeath to the Chapin Home for the Aged and Infirm of the city of New York, a corporation created by an act of the legislature of the State of New York, passed May 1, 1869, the sum of twenty-five thousand dollars in railroad bonds or other securities at par, which at the time of delivery shall be interest-paying
8309 bonds or securities, to be selected by my executors, or such of them as may qualify, out of my estate. This bequest shall be paid in twelve months after my decease or sooner if my executrix and executors, or such of them as may qualify, or the survivors or survivor of them, shall think best, to the person who, when the same is paid, shall act as treasurer of said home, and his receipt shall be a full and sufficient discharge of such executrix and executors. The sum so bequeathed is intended to be a part of the permanent fund of said corporation, to be kept invested under the management and direction of its board of trustees, and the income to be applied from time to time to the uses and purposes of said corporation.

Fourteenth. In case any of the sums held in trust under the fifth, sixth, and seventh clauses of this my will shall become reduced in value whilst they remain in the hands of the trustee thereof so as not to yield four per cent per annum to the parties entitled to the increase thereof, respectively, or in case any of said sums or portions thereof shall be lost by unfortunate investments or otherwise, I authorize my executrix and executors, or such of them as may qualify, or the survivors or survivor of them, at their discretion, to make up such loss either in principal or income, out of any other funds of my estate remaining in their hands if there be any such not specifically appropriated under the foregoing provisions of this will.

All the rest, residue, and remainder of the property and estate, real, personal, and mixed, not hereinbefore devised or bequeathed,

which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise, and bequeath absolutely
8310 and in fee simple as follows: To my nephew, Henry Edwards Huntington, if he should survive me, or in case he should not survive me, to his son, Howard Huntington. In case neither the said Henry Edwards Huntington nor Howard Huntington should survive me, I give, devise, and bequeath all such residue to my wife, Arabella D. Huntington, or if she should not survive me, to my son Archer Milton Huntington, or, if neither said Arabella D. Huntington nor said Archer Milton Huntington should survive me, to the lawful issue of said Archer Milton Huntington living at the time of my death, in equal parts and shares *per stirpes* but not *per capita*.

Fifteenth. In the payment of income to the parties entitled to income as above provided, the trustee of the said several trust estates shall not anticipate such payments or allow the parties to draw such income in advance of its collection, or in advance of such specific times of payment as said trustee shall fix upon from time to time for its convenience.

Sixteenth. I hereby authorize and empower my executrix and executors, or such of them as may qualify, or the survivors or survivor of them, in their discretion, at any time and from time to time, to sell and dispose of, at either public or private sale, any bonds, stocks, securities, or other property held by them, if they shall deem best so to do, and to sell and dispose of, either at public or private sale, all or any part of any real estate of which I shall die seized or possessed, at such times, in such manner and upon such terms as my said executrix and executors, or such of them as may qualify, or the survivors or survivor of them, shall deem advisable, either for cash or on
8311 credit, or partly cash and partly credit, and to make, execute, and acknowledge and deliver good and sufficient deeds and conveyances, assignments, and transfers in law for the same and for any part and parcel thereof, and to invest the proceeds or any funds which may at any time be in their hands, however derived, in United States Government bonds, or in the bonds, stocks, or securities of any State north of the Potomac and Ohio rivers and east of the Mississippi River which have never made default, or in bonds or notes secured by mortgage or improved real estate in the State of New York, or in any good interest paying first mortgage bonds of any railroad, whether within or without this State, that has been completed five years and is owned by a railroad company which has never made default in payment of interest on its bonds, and to change said investments from time to time as said executrix and executors, or such of them as may qualify, or the survivors or survivor of them, may deem advisable, and the trustee of each of the trusts hereinbefore created is hereby invested with the like authority.

Seventeenth. My wife Arabella D. Huntington, as executrix of my last will and testament, or such attorney or substitute as she may from time to time designate or appoint in writing for that purpose, is hereby authorized to join with Charles F. Crocker and Stillman & Hub-

bard or their respective attorneys or personal representatives, in making, signing, accepting or endorsing notes, bills of exchange or commercial paper of any character or description, and such notes, bills of exchange or commercial paper shall bind and be obligatory upon my estate with the like effect in all respects as if I in my lifetime
8312 had joined with such parties in making, signing, accepting or endorsing the same.

Eighteenth. I hereby desire and direct that neither my executrix or executors, nor the trustees of the several trusts hereinbefore created, nor either of them, shall be held responsible or accountable for any loss of or upon any securities, property or assets of my estate whether said securities, property or assets shall have been left by me at the time of my decease or shall have been purchased or held by said executrix, executors or trustee, or for not selling or converting them or any of them into money or other securities, and neither my said executrix and executors or either of them, nor such trustee, shall be held responsible for or required to make up any loss or moneys remaining uninvested or which they may be able to invest.

Nineteenth. I will and direct that any moneys, either principal or income, which by the provisions of this my will shall come to or be received by said Clara Elizabeth, Princess Hatzfeldt, or which shall come to or be received under and in pursuance of any clause of this my will by any other devisee, legatee or beneficiary being a married woman, shall be to her sole use as her separate estate, free from the control and engagements of her husband, and not liable for his debts, and her sole receipt or the receipt of her guardian if she is under age, shall be a full and complete discharge therefor of my executrix and executors or the trustee of any trust hereunder.

Twentieth. The provisions made in this will for my wife Arabella D. Huntington if accepted by her are to be in lieu of and
8313 in full satisfaction and bar of all dower thirds or other title or other interest in my estate and every part thereof.

Twenty-first. I hereby constitute and appoint, as the executrix and executors of my will and estate, my wife, Arabella D. Huntington, Charles H. Tweed and Isaac E. Gates.

Twenty-second. In case any legatee or devisee or beneficiary mentioned or referred to in this my will, for whom or for whose benefit I have made any provision therein, shall endeavor in any wise to contest in any court or before any tribunal this will, or the validity thereof, or its due or proper execution, or the provisions applicable to him or her, or any other provision of this my will, or shall in any way question my acts in making this will or any of its provisions, then and in that event such contestant shall thereupon forfeit and shall henceforth cease to have any right, title or interest in or to any portion of my estate or any property devised or bequeathed hereunder or any income therefrom, and any and all provisions of this will in favor of or for the benefit of such contestant are hereby absolutely revoked and any and all rights and interests which said contestant

would otherwise have had hereunder shall fall into and become a part of the residue of my estate hereinbefore referred to.

I direct that any expenses incurred by my executrix and executors, or such of them as may qualify, or the survivors of survivor of them, in defending any contest in or about or in respect of this will or the provisions thereof, shall be paid from my estate.

Twenty-third. I hereby revoke all other wills or codicils
8314 to wills by me at any time heretofore made.

In witness whereof I have hereunto set my hand and seal the thirteenth day of March, one thousand eight hundred and ninety-seven.

(Signed.) C. P. HUNTINGTON. [SEAL.]

On this thirteenth day of March one thousand eight hundred and ninety-seven, the above named testator, Collis P. Huntington, in our presence subscribed and sealed the foregoing instrument and declared the same to be his last will and testament and thereupon we, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

MAXWELL EVARTS,
231 Second ave., New York City.
ANDREW K. VANDEVENTER,
531 North Broad st., Elizabeth, N. J.
GEO. E. DOWNS,
628 Carlton avenue, Brooklyn, New York.

8315 FRANK M. MURPHY,

recalled as a witness on behalf of the Complainant, in rebuttal, testified as follows:

By Mr. SEVERANCE:

Q. Mr. Murphy, has your attention been called to the testimony given the other day by Mr. Ives?

A. Yes, sir.

Q. Have you read that testimony?

A. I glanced over it hastily.

Q. I gave you a copy to look over, did I not?

A. Yes.

Q. Mr. Ives, you will probably recall from his testimony, stated that the Southern Pacific organization in Arizona, which he seemed to define as consisting largely of Mr. Randolph and himself, never heard that the Santa Fe or the Phoenix & Eastern were contemplating building a line through the Gila canyon until he read your testimony given last year. What, if anything, had been done looking to the construction of a line through the Gila canyon previous to the time that the Arizona & Eastern, the Southern Pacific sub-company,

was organized and you had the difficulty over the 18 miles spoken of by Mr. Ives?

A. We had surveyed a line through the Gila canyon, had engineers in there for several months, and surveyed a line clear through to Lordsburg.

Q. When did that survey begin?

A. I think in May, 1903; finished in December, 1903.

Q. And when was it that you crossed to the north bank of the Gila, and which caused the organization of the Arizona & Eastern spoken of by Mr. Ives?

A. Some time in December in 1903, as I remember it; I haven't the dates exactly.

8316 Q. That same winter?

A. That same winter, yes, sir.

Q. And you had been prosecuting your survey through the Gila canyon since the preceding May?

A. Yes, sir.

Q. What was the purpose of the survey you had made through the Gila canyon?

A. For the purpose of getting information in view of building a railroad.

Q. Building a railroad from where to where?

A. To extend the Phoenix & Eastern to a connection with the Santa Fe at Deming.

Q. That is the line, a part of the proposed transcontinental line, that you marked on the map when you testified here before?

A. Yes, sir.

Q. In addition to surveying through the Gila canyon for the purpose of making that connection, had the Phoenix & Eastern or the Santa Fe made any other survey; if so, from what point to what point?

A. Later on, I think it was right after we completed the survey through the canyon, we ran a line through what is known as the Aravaipa canyon.

Q. Where is the Aravaipa canyon?

A. That is, I should judge, about 10 or 12 miles up the San Pedro, on the proposed line to Benson.

Q. So as to get the matter clear in the record: that canyon is an east and west canyon?

A. Yes, sir.

Q. Parallel with the Gila canyon?

A. Generally speaking, yes.

Q. Your proposed line to Benson was built as far as Dudleyville, according to the testimony?

A. Yes, sir.

Q. And Mr. Ives stated that Dudleyville was situated at the confluence of the San Pedro and the Gila?

A. Yes, sir.

Q. That is, the San Pedro flows into the Gila, doesn't it?

A. Yes.

8317 Q. The San Pedro flows north?

A. Yes, sir, generally.

Q. In a northerly direction?

A. Yes, sir.

Q. Into the Gila?

A. Yes.

Q. And this proposed line down to Benson, concerning which you and Mr. Ives have both testified, followed the valley of the San Pedro?

A. Yes, sir.

Q. Now, as I understand it, this Aravaipa canyon, leading off to the east, left that line about 10 miles south of Dudleyville?

A. Something like 10 miles—10 or 12 miles, I would not be able to say.

Q. What was the purpose of making the survey up that canyon?

A. To make comparisons of costs and see whether we could find a feasible line through there that would be less expensive than the line through the Gila canyon.

Q. Was there anything secret about these surveys that you were carrying on?

A. Not a thing.

Q. Who paid the expenses of those surveys?

A. The Phoenix & Eastern.

Q. The Phoenix & Eastern was at that time controlled by what company?

A. By the Santa Fe.

Q. Upon whose order were these surveys made?

A. Mine.

Q. You were president of the Phoenix & Eastern, were you not?

A. Yes, sir.

Q. What authority, if any, did you have to authorize those surveys?

A. I had authority.

Q. From whom?

A. From the Santa Fe.

Q. What official of the Santa Fe?

A. Mr. Ripley.

Q. He was the president?

A. Yes.

8318 Q. Was anything done toward incorporating a company to build through that Gila canyon?

A. Yes, sir.

Q. What was the name of it?

A. Gila River Railroad Company, I believe.

Q. That was your concern, wasn't it?

A. Yes.

Q. You caused it to be incorporated?

A. Yes, sir.

Q. Now state how you happened to change your route along the Gila, on the way to Dudleyville crossing over from the south side to the north side, and what effect, if any, that would have had in shutting out any other proposed line that might have been contemplated up through the canyon?

A. When we made our first survey, the first preliminary survey to Benson, it was a serious question which side of the river at the point below Kelvin we wanted to occupy, but we finally located on the south side. Later on, as we began to become better acquainted with the conditions, the resources of the country on the north side and the general conditions and the prospects of building the through line, we made a survey to see what the advantages would be in crossing to the north side of the river, and after careful study of the situation, we concluded that it was the wise thing to do and the proper thing to do. The expense of building the line to Benson would not be materially increased, and we would have a better alignment for the transcontinental line that we had in contemplation.

Q. What did you first do on the north side of the river, after crossing over there at the place you mentioned?

A. Before we crossed over we examined the country carefully and made a preliminary survey, staked out the line.

8319 Q. In order to stake out that line on account of the shrubs that were growing there, and the things of that character, what did you have to do first?

A. There were many places that it was absolutely necessary to cut out the undergrowth or the mesquite or the brushwood that generally grows in bottoms like that, or on the hillside, otherwise you couldn't make your surveys. That was all done, that was all brushed out, and the road cut through, the line cut through and stakes set, and estimates furnished our office or furnished to the company as to the cost of construction, advisability, and when we decided to go to the north side we immediately took steps to amend our location that we were making to Benson, and transferred our graders and put men to work on this right of way.

Q. It appears by Mr. Ives' testimony that his interests organized a corporation—called the Arizona & Eastern, wasn't it?

Mr. DUNNE. I think so.

Q. The Arizona & Eastern?

A. Yes.

Q. Which made a survey and filed maps a few hours before your maps were filed, covering that strip?

A. Yes, sir.

Q. Do you know what kind of a survey they made in there, where they made it?

A. The Arizona & Eastern was not organized until after we were working on the north side of the river, and after we had made our survey it developed that——

Mr. DUNNE. Are you speaking of your own knowledge?

WITNESS. Yes, sir, speaking of my own knowledge. It developed that there had been a preliminary, incomplete map filed by the

Arizona & Eastern in the Land Office at Tucson, some time in February, and was necessarily very incomplete because no surveys had been made. We were advised later that parties had been
8320 over our line——

Mr. DUNNE. I shall object to any statement of what you were advised. I asked you if you were speaking of your own knowledge.

WITNESS. I am speaking so far as the incorporation is concerned, and so far as that is concerned that is of my own knowledge.

Q. But what you were about to say with reference to certain parties going along there was told you by someone else?

A. By our men—by men that were constantly on the work.

Q. Were they men whose duty it was to report to you things that were transpiring there?

A. Yes, sir. We had never anticipated and we were not technically on the look-out, because we knew nothing of any opposition, or were not expecting any opposition.

Q. I think I will ask you to state what the report made to you was with reference to men going over the line.

Mr. DUNNE. That is objected to as incompetent and hearsay.

A. When we learned that they had filed a temporary map, or a temporary map had been filed in Tucson, we naturally began to investigate where the data had come from, because we had men constantly occupying the ground and there had been no engineers in there; and it developed that certain parties had been over the road on horseback and foot, and that they had been seen taking the numbers from our stakes.

Mr. DUNNE. I move to strike that testimony out as mere hearsay.

Q. Mr. Ives testified that the controversy was tried out in
8321 the local Land Office, and upon appeal before the Secretary of the Interior, and your right to that right of way was affirmed by the Secretary of the Interior?

A. Yes, sir.

Q. Were these facts developed in that hearing?

A. Yes, sir.

Q. What was the effect, or what would have been the effect, if any, of the construction of the Phoenix & Eastern on the north side of the Gila, in shutting the Southern Pacific people out from access to the Gila canyon?

A. There was lots of room left there for them to get into the canyon. We had not reached the mouth of the canyon or Dudleyville. If we had stopped there and had not gone through the canyon with the east and west road, had gone on to Benson, there would have been abundance of room there for them to go on and to build their road through the canyon.

Q. Mr. Ives testified that they put gangs of men at work in there, and their line was, I think he said 18 feet—I don't know that he gave the number of feet—or certain number of feet above your line, and

that you respectively threw rocks on each other's track, etc. Where did their gang come from that appeared there?

A. We understood they came from Globe.

Q. How near to Dudleyville, we will say first, did the Southern Pacific lines reach on the east? He mentioned San Carlos as a point.

A. About 25 or 30 miles.

Q. That is through the canyon?

A. Through the canyon, yes, sir. I should judge probably 30 miles.

Q. How near did the Southern Pacific's line reach Dudleyville on the west? What was their eastern terminus?

A. Their western terminus, you mean?

Q. I mean the eastern terminus of the western line. Suppose
8322 they had been building towards the east. He spoke of Mesa as the point.

A. I would hardly think Mesa would be considered the point. I should think it would be Tempe.

Q. Well, they had a line to Mesa?

A. To Dudleyville it would be about 80 miles I should judge.

Q. 80 miles from Tempe?

A. 80 miles, yes, sir.

Q. And how far from Mesa?

A. From Mesa about 7 or 8 miles—9 miles. I think the distance in there is about 9 miles.

Q. It is that much less?

A. Yes.

Q. He spoke of Mesa as the point. So that when they began to work on that right of way, this 18-mile strip that has been testified about, the nearest line the Southern Pacific had on the east was at San Carlos, about 30 miles from the west end of the canyon?

A. Yes, sir.

Q. And Mesa about 80 miles, or over?

A. About 75 or 80 miles.

Q. Did they begin any construction work on their end at that time either westerly from San Carlos or easterly from Mesa?

A. No, sir.

Q. What was the grade of their line in this 18-mile strip as compared with the Santa Fe grade—the Phoenix & Eastern? I mean as to being above it or below it.

A. They were considerably above us in some points.

Q. How much work had you done before they appeared on the scene, on the north side of the Gila River?

A. We had done a good deal of work. The heavy work on the north side where we crossed from the south, we had practically covered with graders, and it was all rock work; we had quite a large force in there.

Q. Mr. Ives testified the other day that he and Mr. Randolph had for some time been contemplating the building of a line of
8323 road from Mesa easterly through the Gila canyon and on up to Durango, Colorado. He said that he and Mr. Randolph had had that in their minds for some time. Had you ever heard of any

such intention on the part of the Southern Pacific previous to—well, when did you first hear of that?

A. When they filed their articles of incorporation.

Q. That is, the Arizona & Eastern?

A. The Arizona & Eastern.

Q. That was the first time you had ever heard of it?

A. That was the first time I had ever heard of it.

Q. Now, speaking of this line to Mesa, what kind of a line had the Southern Pacific built out to Mesa, and, if you know, how did that line happen to be built?

A. When I completed the Santa Fe, Prescott & Phoenix into Phoenix the Mesa people were very solicitous and anxious to get us to come up there and give them a railroad. They had no railroad facilities. I had about perfected arrangements to build to Mesa when I learned that the Southern Pacific or the Maricopa road, then owned by the Southern Pacific, had obtained the privilege of laying track in the public road from Tempe to Mesa, largely in the public road; and they did immediately build a very cheap road to Mesa which temporarily interfered with our going there.

Q. At that time had you sold the Santa Fe, Prescott & Phoenix to the Santa Fe?

A. No, sir.

Q. Or did you and your associates own it?

A. Yes, sir.

Q. You still owned it?

A. Yes, sir.

Q. You say a very cheap road. What nature of construction was that road up to Mesa?

8324 A. They did very little grading, and in many places no grading at all; laid the ties right on the ground, and used second-hand material, second-hand ties, and old rails, and it was recognized as a makeshift by everybody.

Q. In the construction of the Phoenix & Eastern, Mr. Murphy, what did you do in the way of construction on account of the fact that it had been concluded to build this low-grade transcontinental line which you had not intended to do before that idea was adopted? I am speaking particularly of bridges.

A. We changed the specifications for the bridges crossing the Gila and brought them up to the Santa Fe's latest standard, to carry their heaviest motive power.

Q. Did the Phoenix & Eastern have a bridge across the Salt River at Tempe?

A. The Phoenix & Eastern?

Q. Yes.

A. Yes, sir.

Q. How soon after you commenced work was that put in?

A. I should judge pretty nearly a year; it might have taken that long to grade and get the approaches I should judge, probably. I haven't the dates exactly.

Q. Is that bridge still standing there?
A. Part of it.
Q. How much of it?
A. I should judge three-quarters of it.
Q. What bridge is used by the Southern Pacific at Tempe?
A. The Southern Pacific's bridge.
Q. Was that a bridge they had previously had?
A. Yes, sir.
Q. On the Maricopa line?
A. Yes, sir.
Q. So that the Phoenix & Eastern line now uses the Southern Pacific bridge at Tempe?
A. Yes, sir.
Q. And the bridge that the Phoenix & Eastern constructed was partly washed out and the balance of it still remains there?
A. Yes, sir. The Maricopa road used part of the line of the Phoenix & Eastern between Phoenix and the river.
8325 Q. That is between Phoenix and the Salt River?
A. Yes.
Q. And Tempe is situated on the Salt River?
A. Yes, sir.
Q. You cross the Salt River from the north going into Tempe, which is on the southerly bank?
A. Yes, sir.
Q. I think you testified, when you were on the stand the first time, that the construction of the Phoenix & Eastern was begun by you and your associates as an independent enterprise?
A. Yes, sir.
Q. That is, not for the Santa Fe road?
A. No, sir.
Q. When was it concluded by the Santa Fe officials—Mr. Ripley—to make that part of the transcontinental route through the Gila canyon or some way to get through the east, in addition to going down to Benson?
A. Ask that question again.
Q. I say how long after you inaugurated the Phoenix & Eastern was it that the Santa Fe officials concluded to make this part of the transcontinental line as well as to go to Benson?
A. The matter was under consideration all the time, being discussed, and the engineers were exchanging views, Mr. Dunn and Mr. Drake, and we were also having the territory looked up west of Wickenburg, with the view of building the 200 miles that we have now nearly completed; it would be a part of that line.
Q. That is, from Wickenburg to Bengal?
A. North of Wickenburg to Bengal.
Q. It crosses the Colorado River at Parker?
A. The estimates of what it would cost to reduce the grade at one or two points—all of those things were being considered, and we also had the country there carefully examined by different engineers, min-

ing engineers, at the different places, to determine the traffic
8326 and conditions that we might expect. That was, I might say, a matter that was being discussed more or less from the start. But the final conclusion looking to the building of the through line was, as I remember it, somewhere about 1903, maybe in November or December, along there; that is, what I considered was the definite understanding that we were going to build through to a connection with the Santa Fe at Deming.

Q. Was that at the time you changed your specifications?

A. No; we were considering this and we had considered the advisability of doing that in anticipation of this, but we had not finally decided.

Q. So that you changed your specifications before that?

A. We changed the specifications of the two crossings of the Gila—that would be the main big bridges. The other features of the road were more or less secondary. They could be brought up to the standard at any time.

Q. Mr. Ives testified with reference to a piece of track of the Phoenix & Eastern that was washed out and an arrangement that was made by which the Southern Pacific built a little track and you leased it from them?

A. Yes, sir.

Q. Do you remember about that?

A. Yes, sir.

Q. What are the facts about that?

A. In the winter of 1904 and the spring of 1905 we had very heavy floods in the Gila and our temporary bridges (we had not put steel bridges in across the Gila at that time) were washed out, and that prevented us getting up to the point where this washout took place, and when we did get there we found that the Gila River had
8327 changed its course and had cut out quite a large piece of farm land that was lying in between our track and the river, something that none of us had ever expected, and took a large part of our track with it. The Southern Pacific having some men at work up in the canyon and in close touch with that situation, they moved down there and appropriated the ground that we would have to move on if we wanted to get away from the river, took possession of it and started work on it. We were unable to get there and, in order to open up our train service through to the end of the line—it would be necessary for us either to trestle or fill and riprap the part that had gone out, or to litigate to get possession of that right of way, if we were to get it, or make some kind of a trade, some kind of a contract with them, and at that time these negotiations were on here in New York for the disposition of the Phoenix & Eastern to the Southern Pacific, and we had no difficulty in making a contract that was reasonably satisfactory, the Southern Pacific or Randolph reserving the right to annul it at any time in case the trade here, I suppose, that was on, had not gone through.

Q. Are you still the president of the Santa Fe, Prescott & Phoenix road?

A. Yes, sir.

Q. That is owned by the Santa Fe but runs as a separate organization?

A. Yes, sir.

Q. And your home is where?

A. Prescott, Arizona.

Q. What kind of business are you in in the Territory of Arizona, outside of being president of the Santa Fe, Prescott & Phoenix?

A. I have quite a good many interests in the Territory.

Q. Of what nature?

8328 A. Merchandising, banking, some other railroad interests, mining, and smelting, and a couple of hotels on my hands—a few little things like that.

Q. You have been very largely interested in different parts of the Territory for many years, haven't you?

A. Yes, sir.

Q. In different kinds of business?

A. Yes, sir.

Q. And still are?

A. Yes, sir.

Q. Some of those industries are on the Southern Pacific lines, are they not?

A. Yes, sir.

Cross-examination by Mr. DUNNE:

Q. When did the Phoenix & Eastern Company first begin to build a railroad—in what year?

A. The company was organized in August, 1901, and began actual construction, it seems to me, in October, 1901. I would like to look at the records for it.

Q. That is approximate?

A. I think so. I would like to look at the record for that.

Q. At what geographical point did the construction begin?

A. Phoenix.

Q. And in May, 1903, how far had the construction progressed in point of mileage?

A. They were about 70 miles, I should think.

Q. And at that time were they running trains?

A. Yes, sir. I don't know that they were running. I don't think the road was open for operation. We were operating trains as you would in construction. We were operating trains to Florence, probably 60 miles.

Q. You had track laid all of the 60 miles?

8329 A. Yes. I would not be so sure, though, if we had every foot of it covered for the extreme 70 miles. I don't know but 70 miles would carry us across the Gila River. I don't think we had our big bridge completed at that time.

Q. When did you first make a survey of any kind or character, good, bad or indifferent, in the Gila canyon?

A. The engineers were in there in May, 1903, and finished before December, 1903.

Q. Did you ever file any profile or map of location for the canyon?

A. Yes, sir.

Q. When?

A. In April, I think it was; in April, 1904.

Q. Now, I will ask you again the question whether at any time prior to May, 1903, you ever made a survey of any kind, and whether prior to April, 1904, you ever filed a profile and map of location in reference to the Gila canyon?

A. To your first question I will say to you that I made a reconnoissance in 1897, I think it was—1897 or 1898—with Mr. Drake, our chief engineer, to Globe, before the railroad was sold to the Santa Fe, with a view of getting an eastern outlet.

Q. In 1897?

A. In 1897; and that I also had negotiations on with Mr. Garland to buy the Gila Valley, Globe & Northern before the Southern Pacific got it, with a view of getting an eastern outlet.

Q. Now, I will ask you again, did the Phoenix & Eastern Railroad Company at any time prior to May, 1903—did that corporation make any survey of any kind of the Gila canyon?

A. Prior to 1903?

Q. Prior to May, 1903.

8330 A. Well, what do you call the Gila canyon now? If you are talking about the Gila canyon from Dudleyville east, I think I would safely say no; but if you call the Gila canyon the point where we crossed from the south side of the river to the north side there, I would say yes.

Q. No, sir, I am not speaking of that. You testified upon your direct examination that in May, 1903, you made a survey in the canyon.

A. I think if you will say beginning some time about May and completed by December, 1903.

Q. What canyon was that?

A. Gila canyon.

Q. Did the Phoenix & Eastern Railroad ever make a survey of that canyon prior to that time?

A. No, sir, not the Phoenix & Eastern, only that I authorized it as president of the Phoenix & Eastern.

Q. Did the Phoenix & Eastern Railroad Company ever file a profile or map of location in respect to that canyon prior to April, 1904?

A. Not the Phoenix & Eastern. The Phoenix & Eastern never filed a profile on that road.

Q. They never filed a profile?

A. The Phoenix & Eastern never did, but the Phoenix & Eastern brought about the incorporation of the Gila River Railroad, and that company filed its articles.

Q. And when was that company incorporated?

A. I think it was incorporated in April, 1904.

Q. April, 1904?

A. Yes, sir.

Q. Now, Mr. Murphy, you made use of the expression in your direct testimony that you were not expecting any opposition. Do you recall using that language?

A. Yes, sir.

Q. In reference to what circumstance did you use that language? Was it in reference to the filing of a profile or map
8331 of location by the Arizona & Eastern?

A. No, sir.

Q. Then, tell me in respect to what circumstance you made use of that expression.

A. This: it had been claimed, as I read Mr. Ives' testimony, that they had had it in their mind for a great many years to build a railroad up to the canyon, and no one in Arizona, as far as I knew, had heard anything of it; and we were building a railroad, and we had built 70 or 80 miles of a railroad undisturbed, and we, naturally, not knowing of anybody else in the business, or thinking of appropriating that territory, were not expecting any trouble.

Q. Then, up to the time that the Phoenix & Eastern Railroad had constructed 70 miles of road you were not expecting any opposition? Isn't that the fact?

A. Pretty much so, yes, sir.

Q. Now, Mr. Murphy, in whose interests were you acting at the time you crossed over from the south bank to the north bank?

A. The Santa Fe. The Phoenix & Eastern and the Santa Fe directly. Of course if you connect it up, I was president of the Phoenix & Eastern road, and that was controlled by the Santa Fe.

Q. You have answered my question very satisfactorily. Now, in respect to what ultimate point was the Phoenix & Eastern Company incorporated? You have given us the point of origin at Phoenix.

A. Yes, sir.

Q. What was the ultimate point to which the articles of incorporation were addressed?

A. When we first started—when I first started the road, within my limited ability, I had contemplated going to Benson.

8332 Q. To Benson?

A. Yes, sir.

Q. Now, this litigation that Mr. Severance speaks of, was a litigation between that very Phoenix & Eastern Company and the Arizona & Eastern Company, wasn't it?

A. I believe so.

Q. Now, in that litigation did you testify as follows: "I had something to do with the making of the change of the route of the company's road from the south side of the Gila River in Pinal County at a point about two miles west of Kelvin to the north side of said river. The change was authorized by me. We were progressing with our work up the Gila and were making numerous observations and a study of the country. We were confronted with the fact that our alignment

on the south side contained considerable heavy curvature. From our observation and investigation it was apparent to the company and to myself as its president and the other directors that we would best serve the public by crossing the river to the north side and running on that side to a point near or opposite Dudleyville, as it was on the north side of the river that the largest mining interests were known to exist.

"It was represented to us and understood by us that that section of the country could not very well be supplied when the river was up, for the river at times was impassable. I ordered an investigation of the facts by the Chief Engineer based upon information that we had been able to obtain and on the report of the engineer that we had examined the country to see whether it was the proper thing for us to do, all things considered, in serving the people there and in getting a good line. The investigation was made and communicated to me as to what could be done and what we could get in the way of
8333 a line as well as the advantages from a purely railroad point of view in undertaking to serve the country through there. As president of the company I immediately ordered Mr. Drake to make a preliminary survey. This preliminary survey was made to verify the conclusions that we had reached. Mr. Drake made that survey and communicated the results to me and as president of the company I instructed him to adopt that line and proceed with the construction on the north side." Did you give that testimony under oath?

A. I think I did.

Q. Was it true?

A. I think so. Absolutely true—all things considered there. That means a good deal.

(An adjournment was thereupon taken until the morning of Friday, April 8, 1910, at 9.30 o'clock.)

8334 ROOM 720, CUSTOM-HOUSE, NEW YORK CITY.

Friday, April 8, 1910—9:30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. Peter F. Dunne and Mr. N. H. Loomis.

Mr. SEVERANCE. The following statement is introduced, subject to the right of the Defendants to file a corrected statement if, upon checking the same, the figures herein stated are found to be incorrect:

The annual report of the Union Pacific Railroad Company for 1900 shows the average mileage operated to be 2,923.45. The said report also shows the number of passengers carried per mile of road was 70,098, or a total of 204,927,998 passengers carried 1 mile.

Mr. Mohler testified (page 4202, printed record) that the passenger train mileage between Council Bluffs and Ogden, in 1900, was 2,597,450. He further testified (same page) that in 1909 the passenger train mileage on the Union Pacific between Council Bluffs and Ogden was 4,400,949; and it appears by the statistics introduced

in connection with Mr. Peter's testimony that in 1909, the entire railroad of the Union Pacific carried 496,120,209 passengers 1 mile.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 218, being a statement relative to dividends on Oregon Short Line Railroad Company's stock January 1, 1901, to March 31, 1910, and was prepared by the Defendants at the request of Complainant.

Complainant's Exhibit 218 is as follows:

8335 COMPLAINANT'S EXHIBIT 218.

Statement giving the rate and aggregate amount of dividends paid the Union Pacific Railroad Co. as stockholder of the Oregon Short Line Railroad Co. since declaration of 50% dividend.

No statement giving the rate and the aggregate amount of dividends whether declared and paid semi-annually or annually can be made in respect to the Oregon Short Line Railroad Co. as has been furnished in respect to the Oregon Railroad & Navigation Co., for the reason that from the year 1897 to and including September 1, 1906, the date of the so-called 50% dividend, no dividends were declared or paid on the stock of the Oregon Short Line Railroad Co., which is exclusively common stock. On September 1, 1906, the distribution at the rate of 50% on the common stock of the Oregon Short Line Railroad Co. was made out of the accumulated surplus from March 16, 1897, to June 30, 1906, the same being paid on September 1, 1906, this being the so-called 50% dividend. Similar distributions from the accumulated surplus were paid February 14, 1907, August 8, 1907, November 14, 1907, June 15, 1908, and June 30, 1909, in the proportion respectively of 10, 20, 10, 100 and 25%, aggregating respectively, $2,734,070, $5,468,140, $2,735,070, $27,350,700 and $6,837,675. These distributions from the accumulated surplus included, in addition to transportation earnings, the income from investments and from sources other than from transportation earnings, but the expression of this distribution in the proportions above mentioned was not accompanied by any separation of items in respect to the sources from which the accumulated surplus was derived,
8336 and for that reason no segregation was made in this statement.

UNION PACIFIC RAILROAD CO.

Dividends received on stock owned of Oregon Short Line Railroad Company from January 1, 1901, to March 31, 1910, inclusive.

Date.	Rate per cent.	Amount.
Feb. 14, 1907	10	$2,734,070
Aug. 8, 1907	20	5,468,140
Nov. 14, 1907	10	2,735,070
June 15, 1908	100	27,350,700
June 30, 1909	25	6,837,675
Total		45,125,655

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 219, being statement of dividends on stock of Oregon Railroad & Navigation Company, owned by the Union Pacific Railroad Company and the Oregon Short Line Railroad Company from July 1, 1901, to date, prepared by the Defendants at request of Complainant.

Complainant's Exhibit 219 is as follows:

8337 COMPLAINANT'S EXHIBIT 219.

Statement giving the rate and aggregate amount of dividends paid the Union Pacific Railroad Co. as stockholder of the Oregon Railroad & Navigation Co. since 1901.

The Union Pacific Railroad Co. received no dividends on stocks of the Oregon Railroad & Navigation Co. subsequently to January 3, 1905. Thereafter such stocks were held by the Oregon Short Line Railroad Co. From 1901 to 1905 the Union Pacific Railroad Co. was paid no dividends on its holdings of common stock of the Oregon Railroad & Navigation Co., no dividend on the common stock of that Company having been declared or paid. Semi-annual dividends at the rate of 2% on the preferred stock of the Oregon Railroad & Navigation Co. were paid to the Union Pacific Railroad Co., beginning July 1, 1901, and ending January 3, 1905, and the aggregate amount thereof was $1,581,378.

8338 UNION PACIFIC RAILROAD CO.

Dividends received on stocks owned of The Oregon Railroad & Navigation Co. from January 1, 1901, to March 31, 1910, inclusive.

RECEIVED BY UNION PACIFIC RAILROAD CO.

Date.	Rate.	Preferred stock.	Common stock.
July 1, 1901	2%	$197,536.00	None.
Jan. 2, 1902	2%	197,642.00	"
July 1, 1902	2%	197,676.00	"
Jan. 2, 1903	2%	197,692.00	"
July 1, 1903	2%	197,708.00	"
Jan. 2, 1904	2%	197,708.00	"
July 1, 1904	2%	197,708.00	"
Jan. 3, 1905	2%	197,708.00	"
		$1,581,378.00	"

8339 *Amount of dividends received by Oregon Short Line Railroad Co. on stocks owned of The Oregon Railroad & Navigation Co. from July 1, 1901, to February 24, 1910, inclusive.*

Date.	Rate.	Preferred stock.	Common stock.
July 1, 1901	2%	$19,538.00	
Jan. 2, 1902	2%	19,538.00	
July 1, 1902	2%	19,538.00	
Jan. 2, 1903	2%	19,538.00	
July 1, 1903	2%	19,538.00	
Jan. 2, 1904	2%	19,538.00	
July 1, 1904	2%	19,538.00	
Jan. 3, 1905	2%	19,538.00	
July 1, 1905	2%	217,336.00	
Jan. 2, 1906	2%	217,384.00	
July 1, 1906	2%	217,384.00	
Jan. 2, 1907	2%	217,384.00	
July 1, 1907	2%	217,420.00	
Jan. 2, 1908	2%	217,450.00	
Feb. 20, 1908	77%	8,372,595.00	
Feb. 20, 1908	79%		$18,943,803.00
Feb. 20, 1909	12½%	1,359,200.00	2,997,425.00
Aug. 2, 1909	2%	217,472.00	
Feb. 3, 1910	2%	217,472.00	
Feb. 24, 1910	11%	1,196,096.00	
Feb. 24, 1910	15%		3,596,910.00
Total		$12,823,497.00	$25,538,138.00

8340 Mr. SEVERANCE. It is stipulated that the defendant E. H. Harriman died in September, 1909, and Robert S. Lovett has been elected President of the defendant Southern Pacific Company, the defendant Union Pacific Railroad Company, the defendant Oregon Short Line Railroad Company, the defendant Oregon Railroad & Navigation Company, and Chairman of the Executive Committee of each of said companies.

Mr. SEVERANCE. It is stipulated that since the commencement of the taking of testimony in this case the defendant Henry H. Rogers has died.

Mr. SEVERANCE. The Complainant now rests.

The SPECIAL EXAMINER. What have the Defendants to say?

Mr. DUNNE. The Defendants rest, subject to the right to put in a correcting statement in respect to the statements offered this morning by the complainant.

TESTIMONY CLOSED.

1 UNITED STATES CIRCUIT COURT, DISTRICT OF UTAH.

UNITED STATES OF AMERICA,
Complainant.
vs.
UNION PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ET AL.,
Defendants.

Order.

The Court having made an order on the 23rd day of October, 1909, upon motion of the defendants postponing the date for taking testimony on the part of said defendants before Sylvester G. Williams, Esq., Special Examiner, which said order was made upon the condition accepted and agreed to by the defendants, that they, the said defendants, should complete the taking of their testimony before said Special Examiner on or before March 19, 1910, and for certain reasons the said defendants now desiring additional time and having applied to counsel for complainant for the same, and counsel for complainant having stipulated that the time for defendants to complete the taking of their testimony may be extended until April 1, 1910, it is therefore—

Ordered, upon condition that the defendants complete the taking of their testimony before said Special Examiner on or before April 1, 1910, which condition is agreed to and accepted by the defendants that the time to do so is extended until that date.

Dated January 17, 1910.

WILLIS VAN DEVANTER,
Circuit Judge.

GENERAL INDEX.

WITNESSES.

Witnesses.	Original page.	Printed record.	
		Volume.	Page.
A.			
Adams, H. M.	4411	VI	2680
Adams, H. W.	4870	VII	2963
Aglar, Leslie	3858	V	2336
Allen, Louis M.	1510	II	928
B.			
Babcock, Stephen H.	3939	VI	2385
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Blair, J. L.	2420	IV	1484
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Blye, Harry C. (1)	1446	II	857
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COMPLAINANT'S EXHIBITS.

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1	Millar.....	List of directors and executive committee of Union Pacific, list of executive committees of Southern Pacific, Oregon Short Line R. R. Co., and Oregon R. R. and Navigation Co.	12	I	8
2	.....do.....	Statement, date of annual meeting Southern Pacific Co., number of shares of stock voted, number of shares of each class of stock owned by Union Pacific or Oregon Short Line.	23	I	18
3	.....do.....	By-laws of Union Pacific R. R. Co. in effect Jan. 7, 1904.	29	I	21
4	.....do.....	By-laws of Union Pacific R. R. Co. as amended Oct. 4, 1906.	51	I	32
5	.....do.....	By-laws of Oregon Short Line R. R. Co., Mar., 1897.	58	I	36
6	.....do.....	By-laws Oregon Short Line R. R. Co. as amended Oct. 10, 1906.	65	I	39
7	.....do.....	By-laws Oregon R. R. and Navigation Co. as amended Oct. 10, 1906.	72	I	42
8	.....do.....	By-laws Southern Pacific Co. as amended June 9, 1904.	78	I	46
9	.....do.....	By-laws Southern Pacific R. R. Co. adopted Mar. 24, 1902, amended Jan. 6, 1904, Mar. 2, 1905, and Nov. 2, 1905.	82	I	48
10	.....do.....	Union Pacific form of proxy, 1900...	89	I	52
11	.....do.....	Southern Pacific form of proxy, Ap., 1902.	90	I	52
12	.....do.....	Southern Pacific form of proxy, Ap., 1903.	91	I	53
13	.....do.....	Southern Pacific form of proxy, annual meeting, Apr. 6, 1904.	93	I	53
14	.....do.....	Southern Pacific form of proxy, annual meeting, Apr. 5, 1905.	94	I	54
15	.....do.....	Southern Pacific form of proxy, annual meeting, Apr. 4, 1906.	95	I	55
16	.....do.....	Resolution Union Pacific board of directors, Aug. 29, 1899, Oregon Short Line stock and including bonds and Oregon R. R. and Navigation stocks.—Acquisition of Short Line and Navigation securities.	101	I	58
17	.....do.....	Certified copy resolution Union Pacific board of directors, Feb. 20, 1901.—Purchase of Southern Pacific Co. stock and issue of Union Pacific convertible 4 per cent bonds, etc.	110	I	63

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18	Millar	Certified copy of resolution Union Pacific board of directors, Jan. 31, 1901.—Securities of other companies.	127	I	72
19	do	Certified copy executive committee Union Pacific R. R. Co., Dec. 13, 1906.—Equipment association organization.	130	I	74
20	do	Certified copy executive committee Union Pacific R. R. Co., Dec. 13, 1906.—Pacific Fruit Express Co. organization.	132	I	75
21	do	Certified copy executive committee Oregon Short Line R. R. Co., Mar. 13, 1903.—Authority to sell Southern Pacific stock.	135	I	76
22	do	Certified copy executive committee Oregon Short Line R. R. Co., Mar. 11, 1903.—Purchase of Southern Pacific stock.	136	I	77
23	do	Certified copy meeting directors, Nov. 12, 1903, Oregon Short Line R. R. Co.—Sale and purchase of Southern Pacific stock.	138	I	78
24	do	Certified copy meeting executive committee Union Pacific R. R. Co., Mar. 11, 1903.—Release of Southern Pacific stock from first-lien mortgage.	139	I	79
25	do	Certified copy meeting executive committee Union Pacific R. R. Co., Mar. 11, 1903.—Release of Southern Pacific stock from first-lien mortgage.	141	I	80
26	do	Certified copy directors' meeting Union Pacific R. R. Co., Feb. 26, 1902.—Sale of stocks of Oregon Short Line.	143	I	81
27	do	Certified copy executive committee meeting Union Pacific R. R. Co., Mar. 11, 1903.—Sale of Southern Pacific stock to Short Line.	145	I	82
28	do	Certified copy executive committee meeting Union Pacific R. R. Co., Mar. 11, 1903.—Release of Oregon R. R. and Navigation Co. stock from Short Line, Income B mortgage.	146	I	83
29	do	Certified copy executive committee meeting Union Pacific R. R. Co., July 17, 1902.—Correspondence with Kuhn, Loeb & Co. re Oregon Short Line participating bonds.	148	I	84
30	do	Certified copy stockholders' meeting Oregon Short Line R. R. Co., Oct. 14, 1903.—Approval of San Pedro agreements, conveyances, etc.	152	I	86

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Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
31	Millar.....	Stock trust agreement between William A. Clark individually and as trustee, Edward H. Harriman as trustee, and the Farmers Loan and Trust Co.	196	I	109
32	.....do.....	Traffic agreement between Oregon Short Line R. R. Co., San Pedro, Los Angeles and Salt Lake R. R. Co., and Union Pacific R. R. Co.	220	I	122
33	.....do.....	Traffic agreement between Southern Pacific Co. and San Pedro, Los Angeles and Salt Lake R. R. Co.	250	I	137
34	.....do.....	Deed, Leamington cut-off, Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	255	I	140
35	.....do	Agreement between Oregon Short Line R. R. Co., San Pedro, Los Angeles and Salt Lake R. R. Co., and Union Pacific R. R. Co.—Guaranty of Union Pacific R. R. Co. to release lien of present and future holdings of Income A or Income B bonds.	260	I	143
36	.....do.....	Lease, Southern Pacific Co. and Southern Pacific R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.—Riverside to San Bernardino.	263	I	145
37	.....do.....	Deed, lines south of Salt Lake City.—Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	283	I	155
38	.....do.....	Deed, terminus branch.—Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	295	I	162
39	.....do.....	Salt Lake yard contract, Oregon Short Line R. R. Co. and San Pedro, Los Angeles and Salt Lake R. R. Co.	302	I	165
40	.....do.....	Deed.—Utah and Pacific R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	334	I	182
41	.....do.....	Deed.—Utah, Nevada and California R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	339	I	185
42	.....do.....	Deed.—New East Tintic Railway Company to San Pedro, Los Angeles and Salt Lake R. R. Co.	344	I	187
43	.....do.....	Certified copy meeting executive committee Oregon Short Line R. R. Co., Aug. 18, 1904.—Subscription to Southern Pacific preferred stock.	356	I	194
44	.....do.....	Certified copy meeting executive committee Oregon Short Line R. R. Co., Mar. 9, 1905.—Purchase of Oregon R. R. and Navigation Co. stock.	357	I	195

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45	Millar.....	Pension system, Union Pacific R. R. Co., Jan. 1, 1903.	359	I	196
46	.....do.....	Certified copy meeting board of directors Union Pacific R. R. Co. Apr. 10, 1906.—Amendment to pension rules.	375	I	204
47	.....do.....	Letter from J. C. Stubbs to E. H. Harriman, July 6, 1905.—Advertising.	386	I	210
48–54	.....do.....	Requests for proxies under stock-trust agreement between Wm. A. Clark, individually and as trustee, and E. H. Harriman as trustee.	388–395	I	211–217
55	.....do.....	Letter.—Wm. Rockefeller to E. H. Harriman, Nov. 5, 1903.	399	I	217
56	Mahl.....	Union Pacific R. R. Co.—Statement common capital stock authorized, issued, and outstanding Dec. 31, 1906.	428	I	234
57	.....do.....	Union Pacific R. R.—Statement preferred capital stock authorized, issued, and outstanding Dec. 31, 1906.	429	I	234
58	.....do.....	Oregon R. R. and Navigation Co.—Statement showing holdings of Portland and Asiatic S. S. Co. stock Jan. 5, 1907.	450	I	247
59	.....do.....	Oregon Short Line R. R. Co.—Statement showing holdings of Southern Pacific Co. common and preferred stock Jan. 5, 1907.	451	I	248
60	.....do.....	Union Pacific R. R. Co.—Annual report for year ending June 30, 1906.	454	I	249
61	.....do.....	Statement submitted to board of directors Union Pacific R. R. Co. at meeting Aug. 15, 1906.	457	I	251
62	.....do.....	Statement of purchase and sale of Northern Securities Co. stock and the substituted Northern Pacific and Great Northern stock.	465	I	256
63	.....do.....	Statement of purchase by Oregon Short Line of Northern Pacific purchase money certificates.	467	I	257
64	.....do.....	Resolution board of directors Union Pacific R. R. Co., Jan. 31, 1901.—Provision for financial requirements.	468	I	258
65	.....do.....	Proceedings executive committee Union Pacific R. R. Co., Mar., 1903.—Amounts loaned and amounts borrowed.	471	I	260
66	.....do.....	Statement showing dates and amounts received from sale of Union Pacific convertible 4 per cent gold bonds.	473	I	261
67	.....do.....	Union Pacific System.—Condensed statement of operations, five months ending Nov. 30, 1901.	478	I	263

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68	Mahl	Statement of stocks deposited Mar. 9, 1905, with Equitable Trust Co. under collateral trust mortgage of Oregon Short Line R. R. Co.	479	I	264
69	do	Oregon Short Line R. R. Co.—Condensed statement of operations from July 1, 1897, to June 30, 1906.	480	I	264
70	do	Oregon Short Line R. R. Co.—Statement showing issue and sale of 4 per cent and participating bonds.	481	I	265
71	do	Oregon Short Line R. R. Co.—Statement showing sale of 4 per cent refunding bonds.	482	I	265
72	do	Statement showing operating surplus at the time the $100,000,000 stock issue was authorized by Union Pacific R. R. Co., showing resources from Feb. 28, 1901 (when stock issue was authorized), to June 30, 1901, and how applied.	483	I	266
73	Cornish	Union Pacific R. R. Co.—Circular re first lien convertible 4 per cent gold bonds, Feb. 13, 1901.	505	I	279
74	Stubbs (1)	List of joint Union Pacific and Southern Pacific agents.	567	II	318
75	Payson	Agreement between Southern Pacific Co. and Atchison, Topeka and Santa Fe Ry. Co., Dec. 7, 1906, relating to various railways in northwestern California.	915	II	530
76	do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and Northwestern Pacific Ry. Co., for sale to the Northwestern Pacific Ry. Co., etc., Dec. 7, 1906.	921	II	534
77	do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and Northwestern Pacific R. R. Co., Mar. 12, 1907, giving right to prevent default under mortgages.	930	II	539
78	do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and the Farmers Loan and Trust Co., Mar. 30, 1907, relating to stock of the Northwestern Pacific R. R. Co.	937	II	542
....	Exhibit 1 (Clark)	San Pedro, Los Angeles and Salt Lake R. R. Co. and W. A. Clark's Exhibit 1 (Clark), San Pedro, Los Angeles and Salt Lake R. R. Co. class rates between Los Angeles and Utah common points.	1138	II	669
79	Clark	List of members of board of directors San Pedro Co., July 1, 1903.	1142	II	672
80	Wells	Carloads of citrus fruit handled season of 1905–6, Nov. 1, 1905, to Oct. 31, 1906.	1235	II	729

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
81A	White (1) (I.C.C.)	Statement showing class and commodity rates in effect June 24, 1897, to date, from and to various points named.	1459	II	866
81B	.....do.....	Statement showing class and commodity rates from Jan. 10, 1898, to date, from and to various points named.	(a)	II	868
81C	.....do.....	Statement showing class rates, all-rail, from Colorado common points to New York, Jan. 1, 1898, to date.	(a)	II	870
81D	.....do.....	Statement showing class rates, from Colorado common points via Gulf routes to New York, May 12, 1897, to date.	(a)	II	872
81E	.....do.....	Footnotes to complainant's Exhibit 81–D.	(a)	II	873
81F	.....do.....	Statement showing commodity rates from various points named to California terminals supplementary to statement showing class and commodity rates from New York, etc., to Pacific coast terminals, as per statement No. 1519.	(a)	II	875
81G	.....do.....	Comparative statement showing changes in eastbound transcontinental freight rates, taking effect Jan. 1, 1909.	(a)	II	877
81H	.....do.....	Comparative statement showing changes in westbound transcontinental freight rates, taking effect Jan. 1, 1909.	(a)	II	878
81I	.....do.....	Continuation of 81–H.....	(a)	II	879
81J	.....do.....	Comparative statement showing changes in class and commodity rates from San Francisco, Cal., to Portland, Oreg., Feb. 10, 1898, to July 1, 1908.	(a)	II	880
81K	.....do.....	Comparative statement showing changes in class and commodity rates from Portland, Oreg., to San Francisco, Cal., Feb. 10, 1898, to July 1, 1908.	(a)	II	881
82A	.....do.....	Statement showing first and second class passenger fares from and to points named.	(a)	II	882
82B	.....do.....	Statement showing first and second class passenger fares from and to points named (continued from complainant's Exhibit 82–A).	(a)	II	882
82C	.....do.....	Statement showing first and second class passenger fares from and to points named (continued from complainant's Exhibit 82–B).	(a)	II	882

a Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
82D	White (1)(I.C.C.)	Rates from Puget Sound points to New York, Harrisburg, Pittsburg, Cincinnati, St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs, and Pueblo via various routes.	(a)	II	882
82E	.....do.....	Statement showing first and second class passenger fares from and to points named.	(a)	II	882
82F	.....do.....	Class rates from St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs, and Pueblo, to Los Angeles, San Francisco, and Portland via various routes.	(a)	II	882
82G	.....do.....	Passenger rates from New York to Los Angeles, San Francisco, Portland, and Puget Sound points, etc.	(a)	II	882
82H	.....do.....	Passenger rates from New York to San Francisco, Los Angeles, Portland and Puget Sound Points via different routes.	(a)	II	882
82I	.....do.....	Passenger rates from Harrisburg, Pa., to Los Angeles, San Francisco, and Portland, etc., via various routes.	(a)	II	882
82J	.....do.....	Passenger rates from Harrisburg, Pa., to San Francisco, Los Angeles, Portland, and Puget Sound via certain routes.	(a)	II	882
82K	.....do.....	Passenger rates from Pittsburg, Pa., to San Francisco, Los Angeles, Portland, and Puget Sound points via certain routes.	(a)	II	882
82L	.....do.....	List of rate sheets from which passenger rates are quoted.	(a)	II	882
83	.....do.....	Statement showing rates on various commodities from New York to California terminals; Morgan Line (via New Orleans), and Mallory Line (via Galveston), and other lines.	(a)	II	884
84	.....do.....	Statement showing rates on various commodities from New York, N. Y., to California terminals; Morgan Line (via New Orleans), and Mallory Line (via Galveston), and other lines, in effect prior to Jan. 1, 1909, and in effect Jan. 1, 1909.	(a)	II	888
85	.....do.....	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Hamburg, Germany, to Seattle, Wash., on 25 cases earthenware.	(a)	II	891
86	.....do.....	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 100 cases champagne.	(a)	II	892

(a) Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
87	White (1)(I.C.C.)	Joint freight tariff, Illinois Central R. R. Co., from Bordeaux, France, to San Francisco, on 50 cases wines.	(a)	II	893
88	.....do.....	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 180 cases mineral water and 580 cases of window glass.	(a)	II	894
89	.....do.....	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 238 cases mineral water.	(a)	II	895
90	.....do.....	Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Oregon Short Line R. R. Co., from Antwerp, Belgium, to Pueblo, Denver, San Francisco, Salt Lake City, on cases of window glass, crockery, toys.	(a)	II	896
91	.....do.....	Joint tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Southern Railway Co., from Antwerp, Belgium, to Oakland and San Francisco, on cases of wash blue and window glass.	(a)	II	897
92	.....do.....	Joint freight tariff, Illinois Central R. R., Union Pacific R. R., and Southern Pacific R. R. companies, from Hamburg, Germany, to San Francisco, on 400 bundles rattan.	(a)	II	898
93	.....do.....	Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and San Pedro, Los Angeles and Salt Lake R. R. Co., from Hamburg, Germany, to San Francisco, on 400 bundles of rattan.	(a)	II	899
94	.....do.....	Tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from London, England, to Salt Lake City, Denver, San Francisco, on certain packages of beer and tea.	(a)	II	899–A
95	.....do.....	Joint freight tariff, Illinois Central R. R. Co. and other railroads named, from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle, or istle.	(a)	II	899–B
96	.....do.....	Joint freight tariff, Illinois Central R. R. and other railroads named, from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle, or istle.	(a)	II	899–C
97	.....do.....	Map showing Missouri River, Mississippi River, Chicago, Cincinnati-Detroit, Pittsburg-Buffalo, New York-Boston, and common points territory.	(a)	II	899–D

(a) Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
98	Blye.....	Statement covering California traffic from New York City via trunk lines and Gulf lines, from June 18, 1883, to Mar. 31, 1902.	1545	III	951
99	Deming.....	Proceedings, meeting of directors Atchison, Topeka and Santa Fe Ry. Co., New York, Feb. 18, 1905.	1573	III	968
100	.....do.....	Proceedings, annual stockholders' meeting of Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kans., Oct. 26, 1905.	1575	III	969
101	.....do.....	Proceedings, stockholders' meeting, Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kans., Oct. 22, 1908.	1577	III	970
102	.....do.....	Proceedings, board of directors' meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906.	1578	III	970
103	.....do.....	Proceedings, board of directors meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906.	1582	III	972
104	.....do.....	Agreement between Atchison, Topeka and Santa Fe Ry. Co. and Southern Pacific Co. with respect to sale of Phoenix and Eastern Ry. and joint trackage agreements, Dec. 7, 1906.	1585	III	974
105	.....do.....	Agreement between Southern Pacific R. R. Co., Phoenix and Eastern Ry. Co., and Southern Pacific Co. and Atchison, Topeka and Santa Fe Ry. Co.—Trackage right between Phoenix and Deming.	1596	III	980
106	.....do.....	Deming agreement between Atchison, Topeka and Santa Fe Ry. Co., Arizona and California Ry. Co., Santa Fe, Prescott and Phoenix Ry. Co. and Southern Pacific Co., granting to Southern Pacific Co. trackage rights between Phoenix and Mojave.	1628	III	997
107	Murphy.....	Map, Union Pacific and Southern Pacific Systems, 1908.	.....	III	1015
108	.....do.....	Map, Atchison, Topeka and Santa Fe Ry. System, 1908.	.....	III	1048
109	Schiff.....	Plan and agreement for the reorganization of Union Pacific Ry. Co., including its Kansas-Pacific lines, Oct. 15, 1895.	1757	III	1077
110	Morawetz.....	List of members of executive committee of board of directors of Atchison, Topeka and Santa Fe Ry. Co., from and including election of Jan. 6, 1904, to and including election of Nov. 4, 1908.	1910	III	1166
111A	Douglas	Letter from F. M. Murphy to Mr. Hutchinson, Phelps, Dodge & Co. Aug. 10, 1901; and memo. re contract between Arizona and S.E. Ry. and S.F.P.& P. Ry.	1918	III	1171

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
111B	Douglas	Letter from El Paso & Southwestern R. R. Co. to F. M. Murphy, Aug. 12, 1901.	1924	III	1174
111C	do	Letter to F. M. Murphy from James Douglas, Oct. 23, 1901.	1929	III	1177
111D	do	Telegram from F. M. Murphy to James Douglas, Nov. 3, 1901.	1930	III	1177
111E	do	Letter from F. M. Murphy to S. P. Hutchinson, Nov. 9, 1901.	1931	III	1178
111F	do	Letter from S. P. Hutchinson to Phelps, Dodge & Co., Nov. 11, 1901.	1932	III	1179
111G	do	Letter from S. P. Hutchinson to James Douglas, Nov. 14, 1901.	1934	III	1180
111H	do	Letter from Santa Fe, Prescott and Phoenix Ry. Co. to El Paso and Southwestern R. R. Co., Mar. 10, 1902.	1936	III	1181
111I	do	Letter from James Douglas to Phelps, Dodge & Co., May 10, 1902.	1937	III	1182
111J	do	Traffic agreement between El Paso and Southwestern R. R. Co. and Santa Fe, Prescott and Phoenix Ry. Co.	1941	III	1184
111K	do	Letter from F. M. Murphy to James Douglas, June 24, 1902.	1949	III	1189
111L	do	Letter from El Paso and Southwestern R. R. Co. to Frank Murphy, July 14, 1902.	1951	III	1190
111M	do	Letter from F. M. Murphy to James Douglas, July 19, 1902.	1954	III	1192
111N	do	Letter from F. M. Murphy to James Douglas, July 25, 1902.	1957	III	1194
111O	do	Letter from F. M. Murphy to James Douglas, July 28, 1902.	1958	III	1194
112	Watson	Form of postal card notice (showing joint agency at Pittsburg).	2208	III	1353
113	do	J. E. Corfield business card (showing joint agency at Pittsburg).	2209	III	1354
114	do	Letter from G. C. Herring to Knowles, Taylor & Knowles.	2210	III	1354
115	Nichols	W. H. Connor business card (showing joint agency at Cincinnati).	2407	IV	1477
116	do	Lyon Liston business card and map for same purpose.	2407	IV	1477
117 118	}	Withdrawn	2830		
119	Stebbins, revised.	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.	(a)	IV	1872
120	do	do	(a)	IV	1872
120A	Stebbins	Statement of certain traffic carried by Southern Pacific.	(a)	IV	1872
120B	do	Statement of certain traffic carried by Southern Pacific Co. lines via El Paso.	(a)	IV	1872
120C	do	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.	(a)	IV	1872

[a] Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
120D	Stebbins (1).....	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.	(a)	IV	1872
121	Stebbins (1), revised.	.....do.....	(a)	IV	1872
122	.....do.....	.....do.....	(a)	IV	1872
123	Stebbins (1).....	.....do.....	(a)	IV	1872
124	.....do.....	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines.	(a)	IV	1872
125	.....do.....	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.	(a)	IV	1872
126	.....do.....	.....do.....	(a)	IV	1872
127	.....	Southern Pacific Co.—List of securities, issued since Dec. 31, 1906, and including Dec. 17, 1908.	3207	V	1970
128	.....	Union Pacific R. R. Co.—List of securities, issued from Dec. 31, 1906, to Dec. 17, 1908.	3208	V	1970
129	.....	Union Pacific R. R. Co.—Directors elected Oct. 8, 1907; Oct. 13, 1908, etc.	3209	V	1971
130	.....	Oregon Short Line R. R. Co.—Directors elected Oct. 9, 1907; Oct. 14, 1908, etc.	3211	V	1972
131	.....	Southern Pacific Co.—Directors elected Apr. 3, 1907; Apr. 8, 1908, etc.	3212	V	1973
132	.....	Pacific Mail S. S. Co.—Directors elected May 29, 1907; May 27, 1908, etc.	3214	V	1974
133	.....	Oregon R. R. and Navigation Co.—Directors elected Sept. 26, 1907; Sept., 10, 1908, etc.	3215	V	1975
134	.....	Occidental and Oriental S. S. Co.—Directors elected July 10, 1907, and July 8, 1908; San Francisco, and Portland S. S. Co.—Directors elected June 19, 1907, and June 3, 1908, and supplements thereto.	3217	V	1976
135	.....	San Pedro, Los Angeles and Salt Lake R. R. Co.—Directors elected Nov. 16, 1907, and Nov. 16, 1908, etc., and supplements thereto.	3218	V	1977
136 to 149	.....	Oregon Short Line—Union Pacific proxies.	3220 to 3240	V	1978 to 1989
150	Stubbs (2).....	Proceedings at hearing before board of arbitration on question of Canadian Pacific differentials, at Auditorium Hotel, Chicago, Oct. 12, 1898.	3333	V	2043
151	McCarthy.....	Union Pacific rate card—Class rates from eastern points to Utah common points, in effect Oct. 1, 1900.	3898	VI	2359
152	.....do.....	Union Pacific rate card—Class rates to Utah common points, in effect July 1, 1908.	3904	VI	2364

[a] Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
153	Love (1)	Comparative statement of rates, etc.	4045	VI	2456
154	do	Petition, T. E. Gibbon to mayor and city council of Salt Lake, Sept. 25, 1900; and petition, W. A. Clark to mayor and city council of Salt Lake City, Oct. 2, 1900; report from committee on streets, public grounds, and municipal laws to president and members of common council, Salt Lake City, Oct. 23, 1900.	4055	VI	2460
155	Kerr	Article, Salt Lake Tribune, Sept. 7, 1900.	4137	VI	2510
156	do	Article, Salt Lake Tribune, Sept. 19, 1900.	4142	VI	2513
157	do	Article, Salt Lake Tribune, Sept. 27, 1900.	4146	VI	2515
158	do	Article, and speech by Senator Clark, Salt Lake Tribune, Oct. 3, 1900.	4150	VI	2517
159	Love (2)	Statement showing rates for 100 miles out of Salt Lake.	4289	VI	2603
160	do	Statement showing rates out of Salt Lake on a number of commodities.	(a)	VI	2604
161	Crichton	Letter from C. H. Markham to Columbia River and Puget Sound Navigation Co.	4613	VI	2808
162	Grimes	Report by W. H. Holabird upon traffic possibilities for a standard-gauge railroad between Drain and Marshfield, Oreg., made at the direction of E. H. Harriman.	4721	VI	2875
163	do	Telegram from J. T. McCormac and W. H. Evans to J. Kruttschnitt, Mar. 9, 1909.	4729	VI	2879
164	do	Telegram from E. H. Harriman to J. T. McCormac and W. H. Evans, Mar. 9, 1909.	4730	VI	2880
165	do	Letter from J. T. McCormac to E. H. Harriman, Mar. 11, 1909.	4731	VI	2880
166	do	Letter from E. H. Harriman to J. T. McCormac and W. H. Evans, Mar. 18, 1909.	4732	VI	2881
167	do	Letter from J. T. McCormac to E. H. Harriman, Apr. 7, 1909.	4735	VI	2882
168	do	Letter from Alex. Millar to J. T. McCormac, Apr. 21, 1909.	4737	VI	2883
169	Connor	Contract between Panama R. R. Co. and the Pacific Mail S. S. Co., June 11, 1902.	4788	VII	2914
170	Whittemore	Bill of complaint in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al.	5175	VII	3149
171	do	Answer and cross bill of San Pedro, Los Angeles and Salt Lake R. R. Co. to amended and supplemental bill of complaint in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al.	5206	VII	3165

[a] Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
172	Whittemore.....	Amended and supplemental bill of complaint, etc., in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al.	5239	VII	3181
173	.....do.....	Amended answer to original bill in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al	5298	VII	3213
174	.....do.....	Affidavit of J. K. W. Bracken.....	5321	VII	3225
175A	.....do.....	Order of Judge Hawley, Apr. 27, 1901, in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al.	5333	VII	3230
175B	.....do.....	Order of court, July 22, 1901, in case of Utah, Nevada and California R. R. *v.* Utah and California Ry. Co. et al.	5337	VII	3232
175C	.....do.....	Order of Judge Hawley, Aug. 9, 1901, in case of Utah, Nevada and California R. R. Co. *v.* Utah and California Ry. Co. et al.	5339	VII	3233
176	.....do.....	Amended and supplemental bill of complaint, filed by leave of court, etc., in case of Utah, Nevada and California R. R. Co. *v.* John Simpson et al.	5348	VII	3238
177	Rossbottom.....	Statement of tonnage from New York to San Francisco and vice versa, from 1898 to 1908, inclusive.	5442	VII	3288
178	.....do.....	Letter from R. P. Schwerin to E. A. Drake, Feb. 18, 1909.	5446	VII	3290
179	.....do.....	Contract between Panama R. R. Co. and the Pacific Mail S. S. Co., Dec. 16, 1895.	5451	VII	3293
180	.....do.....	Supplemental contract between the Panama R. R. Co. and the Pacific Mail S. S. Co., June 11, 1902.	5483	VII	3311
181	.....do.....	Contract between Pacific Mail S. S. Co. and Union Pacific R. R. Co., Oct. 1, 1872.	5494	VII	3316
182	.....do.....	Agreement between Transcontinental Association and Pacific Mail S. S. Co., Oct. 1, 1889.	5503	VII	3321
182½	.....do.....	Letter—Notice—Panama Railroad Company to Pacific Mail Steamship Co., Jan. 12, 1905.	5539	VII	3342
183A	White (2), I. C. C.	Statement showing class rates from Portland to San Francisco, from Apr. 3, 1888, to date.	5556	VII	3353
183B	.....do.....	Supplement to statement No. 1688, showing "emergency" rates between Portland and San Francisco, effective Dec. 1, 1895.	5557	VII	3353
184	.....do.....	Southern Pacific Co. tariff, showing rates between San Francisco and Portland, Salem, and points between, effective Dec. 1, 1895.	5559	VII	3354

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
185	White (2), I. C. C.	Southern Pacific Co. tariff, naming rate from San Francisco to Portland, Albany, and points between, effective Dec. 15, 1895, superseding interstate special rate No. 1258.	5560	VII	3355
186	.....do.....	Southern Pacific Co. tariff, showing rates between San Francisco, Sacramento, Stockton, Marysville, Oakland, Sixteenth Street, and San Jose, and Utah common points, effective Dec. 12, 1887.	5562	VII	3356
187	.....do.....	Oregon Ry. and Navigation Co.–Union Pacific Ry. Co., special tariff on canned fruit and vegetables to Salt Lake City, Montana common points and Union Pacific eastern terminals, effective June 29, 1888.	5565	VII	3358
188	.....do.....	Transcontinental Association westbound tariff, effective Jan. 15, 1891, etc.	5567	VII	3359
189	.....do.....	Statement showing rates on wool in grease, carloads, minimum weight 20,000 pounds, from points on Oregon Short Line R. R. to New York, all-rail, in comparison with rates from points on Southern Pacific System via El Paso and Sunset Gulf routes, except as noted.	5571	VII	3361
190	.....do.....	Statement showing rates on classes and two commodities between Portland, Oreg., and Ogden and Salt Lake City, Utah, via Oregon R. R. and Navigation Co. and Oregon Short Line R. R., in comparison with rates via Southern Pacific Co.	(a)	VII	3363
191	.....do.....	Statement showing rates on classes between Portland, Oreg., and Colorado common points, via Oregon R. R. and Navigation Co. and Oregon Short Line R. R. in comparison with rates via Southern Pacific Co.	(a)	VII	3365
192	.....do.....	Statement showing rates on classes and two commodities between Portland, Oreg., and Ogden and Salt Lake City, Utah, via Oregon R. R. and Navigation Co. and Oregon Short Line R. R., in comparison with rates via Southern Pacific Co.	(a)	VII	3368
193	.....do.....	Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail via Norfolk, Va., from May, 1899, to date.	5581	VII	3369

[a] Separate volume of exhibits.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
194	White (3), I. C. C.	Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail via Savannah, Ga., from June 1, 1904, to date.	5585	VII	3370
195	.....do.....	Statement showing rates on ore and concentrates, carloads, from stations on Phoenix and Eastern R. R. to Humboldt, Ariz., in effect Feb. 3, 1906.	5586	VII	3371
196	.....do.....	Statement showing rates on ore and concentrates and copper matte, carloads, from stations on Phoenix and Eastern R. R. to Humboldt, Ariz., in effect June 1, 1907, and Sept. 10, 1907, as noted.	5589	VII	3372
197	.....do.....	Southern Pacific Company's through rate tariff No. 740, showing rates on wool to points named.	5591	VII	3373
198	.....do.....	Same as Complainant's Exhibit 197, but filed by Rio Grande Western Ry.	5592	VII	3373
199	.....do.....	Tariffs on wool in bales filed by Rio Grande Western.	5594	VII	3374
200	....	Statement showing ownership of stock in Union Pacific, Southern Pacific, Atchison, Topeka and Santa Fe Railway companies, by the individual defendants and the firm of Kuhn, Loeb & Co., at the various dates stated.	5623	VII	3391
201	.....	Memoranda showing method used to divide (distribute) transcontinental freight rates, etc.	5635	VII	3397
202	.....	No Exhibit 202.			
203	.....	Articles of incorporation of San Pedro, Los Angeles and Salt Lake R R. Co.	5651	VII	3405
204	.....	Agreement between San Pedro, Los Angeles and Salt Lake R. R. Co. and the Pacific Fruit Express, Mar. 1, 1908.	5672	VII	3417
205	.....	Articles of association of Union Pacific R. R. Co., etc.	5685	VII	3423
206	.....	Articles of incorporation of Oregon Short Line R. R. Co.	5705	VII	3433
207	.....	Articles of incorporation of Oregon R. R. and Navigation Co.	5716	VII	3439
208	.....	Act of general assembly of State of Kentucky, incorporating Southern Pacific Co., etc.	5759	VII	3462
209	.....	I. C. C. Supplement No. 2 to statement No. 1688, showing special rates on salt and sugar between San Francisco, Cal., and Portland, Oreg., etc.	5767	VII	3466

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
210	Munroe (2).....	Understanding between San Pedro and Southern Pacific companies, of Aug. 2, 1905, and change by conference between them Jan. 27, 1906.	6838	IX	4070
211	Stebbins (2).....	Letter from Erastus Young to E. R. Murphy, Sept. 1, 1909.	7684	X	4605
212	White (3), I. C. C.	Statement showing differential rates in effect Dec. 1, 1908, and Jan. 1, 1909, on traffic from New York, N. Y., via all-rail and from Morgan Line pier via Morgan Line to San Francisco.	8266	XI	4962
213	Peter, I. C. C....	Statement compiled from annual reports of Oregon R. R. and Navigation Co. to Interstate Commerce Commission for years ending June 30, 1905, to 1896, showing miscellaneous income from ocean and river steamers.	8271	XI	4969
214	.....do.....	Statement showing tons carried one mile, freight revenue, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems.	8275	XI	4972
215	.....do.....	Statement showing operating revenues, operating expenses, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems.	8275	XI	4993
216	.....do.....	Statement showing maintenance of way and structures, maintenance of equipment, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems (separate volume of exhibits).	8276	XI	5042
217	Tweed	Last will and testament of Collis P. Huntington.	8295	XI	5059
218	.....	Statement relative to dividends on Oregon Short Line R. R. Co. stock Jan. 1, 1901, to Mar. 31, 1910.	8335	XI	5082
219	.....	Statement of dividends of stock of Oregon R. R. and Navigation Co. owned by Union Pacific R. R. Co. and Oregon Short Line R. R. Co. from July, 1901, to date.	8337	XI	5083

DEFENDANTS' EXHIBITS.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
1	Stebbins (1)	Letter from R. S. Lovett to Kellogg & Severance, June 27, 1908.	3051	IV	1873
2	.....do.....	Letter from C. A. Severance to Robert S. Lovett, July 23, 1908.	3053	IV	1874
3	.....do.....	Letter from Erastus Young to R. S. Lovett, Aug. 12, 1908.	3055	IV	1875
4	.....do.....	Letter from Davis, Kellogg & Severance to R. S. Lovett, Aug. 24, 1908.	3060	IV	1878
5	.....do.....	Letter from C. A. Severance to R. S. Lovett, Sept. 11, 1908.	3062	IV	1880
6	.....do.....	Letter from Erastus Young to R. S. Lovett, Dec. 18, 1908.	3064	IV	1881
7	.....do.....	Letter from C. A. Severance to R. S. Lovett, Feb. 11, 1909.	3067	IV	1883
8	.....do.....	Letter from Erastus Young to R. S. Lovett, Mar. 6, 1909.	3070	IV	1885
9	.....	*No exhibit of this number.*			
10	.....	Bill of complaint filed in Circuit Court of United States for Eighth Judicial District of Nebraska, in the case of Oliver Ames et al. *v.* Union Pacific Ry. Co. et al., Oct., 1893.	5771	VIII	3469
11	.....	Answer of defendants Union Pacific Ry. Co. in same case as Defendants' Exhibit 10, Oct., 1893.	5846	VIII	3511
12	.....	Order appointing receivers in same case as Defendants' Exhibit 10, Oct., 1893.	5848	VIII	3513
13	.....	Decree of foreclosure in same case, July 29, 1897.	5856	VIII	3517
14	.....	Order of court confirming sale, Nov. 8, 1897.	5911	VIII	3547
15	.....	Assignment by Louis Fitzgerald and Alvin W. Krech of their bid to Union Pacific R. R. Co.	5913	VIII	3548
16A	.....	Deed under decree foreclosing first mortgage of Union Pacific R. R. Co., Wm. D. Cornish, special master, and others to the Union Pacific R. R. Co., Jan. 22, 1898.	5919	VIII	3551
16B	.....	Third report of Wm. D. Cornish, special master, under decree of foreclosure in case of United States *v.* Union Pacific Ry. Co. et al., Jan. 27, 1898 (with subexhibits).	5953	VIII	3568
16C	.....	Order confirming third report of special master in case of United States *v.* Union Pacific Ry. Co. et al., Jan. 31, 1898.	5964	VIII	3575

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
17		Final decree in case of United States *v.* Union Pacific Ry. Co. et al., July 29, 1897.	5966	VIII	3576
18		Order confirming special master's first report of sale in case of United States *v.* Union Pacific Ry. Co. et al., Nov. 6, 1897.	6015	VIII	3603
19		Assignment of bid by Louis Fitzgerald and Alvin W. Krech in favor of United States, Jan. 17, 1898.	6017	VIII	3604
20		Deed, under decree foreclosing government subsidy lien on Union Pacific Railroad, Wm. D. Cornish, special master, and others to Union Pacific R. R. Co., Jan. 22, 1898.	6024	VIII	3608
21		Final decree in case of United States *v.* Union Pacific Ry. Co. et al., July 30, 1897.	6055	VIII	3624
22		Decree confirming sale, in case of United States *v.* Union Pacific Ry. Co. et al., Feb. 17, 1898.	6080	VIII	3637
23		Second report of Wm. D. Cornish, special master, under decree of foreclosure, in case of United States *v.* Union Pacific Ry. Co. et al., May 12, 1898 (with subexhibits).	6082	VIII	3638
24		Order confirming second report of Wm. D. Cornish, special master, under decree of foreclosure in case of United States *v.* Union Pacific Ry. Co. et al., May 13, 1898.	6089	VIII	3642
25		Assignment by Winslow S. Pierce and Alvin W. Krech to Union Pacific R. R. Co. of their bid at sale.	6093	VIII	3644
26		Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Apr. 19, 1898.	6099	VIII	3647
27		Decree of foreclosure rendered July 30, 1897, by Circuit Court of the United States for the District of Kansas.	6117	VIII	3657
28		Order confirming sale, Mar. 5, 1898..	6182	VIII	3692
29		Assignment of bid by Alvin W. Krech and Lawrence Greer to Union Pacific R. R. Co., Mar., 1898.	6183	VIII	3693
30		Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Mar. 22, 1898.	6189	VIII	3697
31		Foreclosure decree, Denver Pacific first mortgage, July 31, 1897.	6236	VIII	3721
32		Order confirming sale under foreclosure decree, Denver Pacific first mortgage, Mar. 14, 1898.	6281	VIII	3746
33		Assignment of bid by Krech & Greer under Denver Pacific mortgage foreclosure to Union Pacific R. R. Co., Mar. 21, 1898.	6282	VIII	3746

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
				Vol.	Page.
34	.....	Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Mar. 22, 1898, conveying property sold under Denver-Pacific Ry. and Telegraph Co. mortgage.	6288	VIII	3749
35	.....	Articles of consolidation and agreement between Oregon Short Line Ry. Co., Utah and Northern Ry. Co., Utah Central Ry. Co., Salt Lake and Western Ry. Co., Utah and Nevada Ry. Co., Ogden and Syracuse Ry. Co., Idaho Central Ry. Co., and Nevada Pacific Ry. Co., Apr. 20, 1901.	6342	VIII	3777
36	.....	Agreement between United States, Central Pacific R. R. Co., and Speyer & Co., Feb. 1, 1899.	6370	VIII	3793
37	.....	Notice to holders of bonds and shares of Central Pacific R. R. Co., Feb. 20, 1899, plan of readjustment Feb. 8, 1899; readjustment agreement Feb. 8, 1899.	6392	VIII	3804
38	.....	Articles of association of Central Pacific Ry. Co., July 26, 1899.	6440	VIII	3829
39	.....	Agreement between Central Pacific R. R. Co. and Central Pacific Ry. Co., July 29, 1899.	6450	VIII	3834
40	.....	Lease, Central Pacific R. R. Co. to Southern Pacific Co., Feb. 17, 1885.	6460	VIII	3839
41	.....	Southern Pacific Co. to Central Trust Co. of New York, trustee—Indenture subordinating lease to lien of Central Pacific Ry. Company's first refunding mortgage, Aug. 1, 1899.	6884	VIII	3852
42	.....	Southern Pacific Co. to United States Trust Co., trustee—Indenture subordinating lease to lien of Central Pacific Ry. Company's 3½ per cent mortgage, Aug. 1, 1899.	6490	VIII	3855
43	.....	Collateral trust mortgage of Southern Pacific Co. to Union Trust Co. of New York, trustee, Aug. 1, 1899.	6496	VIII	3857
44	.....	Supplemental mortgage from Southern Pacific Co. to Union Trust Co. of New York, trustee, Dec. 29, 1899.	6532	VIII	3877
45	Stubbs, 3	Westbound Asiatic traffic—Volume and Union Pacific and Southern Pacific revenue via Portland and Sunset Gulf route.	6653	IX	3949
45A	"Supplemental" Stebbins (2).	Statement of tons carried and freight revenue of Union Pacific System on westbound freight traffic between the Orient and various eastern territories via Portland, Oreg., for the fiscal year ending June 30, 1901.	7615	X	4557

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
45B	"Supplemental" Stebbins (2).	Southern Pacific Co., Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines on business forwarded to China and Japan, for fiscal year ending June 30, 1900.	7617	X	4650
45C	.....do.....	Asiatic traffic: Volume and Union Pacific and Southern Pacific Revenue for year ending June 30, 1900.	7619	X	4561
45D	.....do.....	Statement of tons carried and freight revenue of Union Pacific System, on eastbound freight traffic between the Orient and various eastern territories via Portland, Oreg., for the fiscal year ending June 30, 1901.	7621	X	4562
45E	.....do.....	Statement of freight traffic from points in Missouri River and common points territory and points east thereof, via Chicago, Milwaukee and St. Paul Ry. and Chicago and Northwestern Ry. to the Orient, via Union Pacific R. R., Ogden, Utah, and Southern Pacific Co.-Pacific System, for the fiscal year ending June 30, 1901.	7624	X	4564
45F	.....do.....	Statement of freight traffic from the Orient via Southern Pacific Co.-Pacific System, Ogden, Utah, and Union Pacific R. R. to points in Missouri River and common points territory and points east thereof, via the Chicago, Milwaukee and St. Paul Ry. and Chicago and Northwestern Ry. for fiscal year ending June 30, 1901.	7625	X	4566
45G	.....do.....	Statements of tons carried and freight revenue of Union Pacific System on westbound and eastbound freight traffic between the Orient and various eastern territories via Portland, Oreg., for fiscal year ending June 30, 1900.	7681	X	4602
46	Stubbs, (3).....	Traffic between San Francisco and Portland, volume and Union Pacific and Southern Pacific earnings, for year ending June 30, 1901.	6659	IX	3953
46A	"Supplemental" Stebbins (2).	Statement of tonnage and Union Pacific System (Oregon R. R. & Navigation Co.)—Revenue on freight traffic handled by the Oregon R. R. & Navigation Co.'s steamship line between San Francisco and Portland locally (not including traffic to or from points beyond Portland), for fiscal year ending June 30, 1901.	7627	X	4567
47	Stubbs, (3).....	Willamette Valley traffic, year ending June 30, 1901.	6664	IX	3956

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
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47A	"Supplemental" Stebbins (2).	Willamette Valley traffic for year ending June 30, 1901.	7629	X	4568
47B	.....do.....	Statement showing tonnage and Union Pacific System freight revenue on certain freight traffic handled by the Oregon R. R. and Navigation Co.'s Willamette River boats, for fiscal year ending June 30, 1901.	7630	X	4569
48	Stubbs (3).....	Lumber and other traffic, from Portland to Ogden and common points and beyond, via Southern Pacific Co. and Denver and Rio Grande R. R. and via Union Pacific System, for July, September, and November, 1900, and January, March, and April, 1901.	6667	IX	3958
48A	"Supplemental" Stebbins.	Tonnage and revenue on freight traffic (principally lumber) from Portland, Oreg., to Utah common points, Colorado common points, and points east thereof, competitive between the Union Pacific System Lines and Southern Pacific Co. Pacific System, for July, September, and November, 1900, and January, March, and April, 1901.	7635	X	4572
48B	.....do.....	Freight traffic originating at Portland, Oreg., routed east, via Rio Grande lines.	7636	X	4573
49	Stubbs (3).....	Traffic to and from Portland and Atlantic seaboard, Pittsburg, etc., via Sunset route and via Union Pacific Granger route, for fiscal year ending June 30, 1900.	6670	IX	3960
49A	"Supplemental" Stebbins (2).	Statement of freight traffic between Portland, Oreg., and points in Missouri River and common points territory and points east thereof, via Southern Pacific Co.-Pacific system, El Paso, Tex., and New Orleans, La., for fiscal year ending June 30, 1900.	7639	X	4575
49B	.....do.....	Statement of tons carried and freight revenue of Union Pacific System on freight traffic between Portland, Oreg., proper and various eastern territories via Granger, Wyo., for fiscal year ending June 30, 1900.	7640	X	4576
50	Stubbs, 3.....	Traffic to and from Portland and Atlantic seaboard, Pittsburg and Ohio River territories, year ending June 30, 1900.	6674	IX	3962
50A	"Supplemental" Stebbins (2).	Traffic to and from Portland and Atlantic seaboard, Pittsburg and Ohio River territories, including all traffic between Portland and points on and east of Missouri River, year ending June 30, 1900.	7642	X	4577

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
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50B	"Supplemental" Stebbins.	Statement of freight traffic between Portland, Oreg., and Missouri River and common points territory and points east thereof, via Southern Pacific Co. lines via Ogden and Rio Grande Western Ry., for year ending June 30, 1900.	7643	X	4578
51	Stubbs (3).....	Hops and wool from Portland to Missouri River and east.	6677	IX	3964
51A	"Supplemental" Stebbins (2).	Tonnage and freight revenue on hops and wool traffic from Portland, Oreg., to Missiouri River and east thereof, via the Union Pacific System lines and Southern Pacific Co. lines, for fiscal year ending June 30, 1900.	7647	X	4580
52	Stubbs (3).....	Traffic between San Francisco and Montana and Idaho points (including eastern Oregon, Washington, and British Columbia), served by Northern Pacific and competed for—for the service between San Francisco and Portland—by the Southern Pacific and the Oregon R. R. and Navigation Co., for the year 1900.	6681	IX	3966
52A	"Supplemental" Stebbins (2).	Tonnage and freight revenue of traffic from and to San Francisco Bay points via Portland, Oreg. (not via Huntington or Ogden), to and from points on Northern Pacific Ry. east of Pasco, Wash.	7649	X	4581
53	Stubbs (3).....	Traffic between Atlantic seaboard territory and Colorado common points via Southern Pacific and Gulf ports, via Union Pacific, all-rail, and via Union Pacific and South Atlantic ports, for year ending June 30, 1900.	6685	IX	3969
53A	"Supplemental" Stebbins (2).	Southern Pacific Co., Atlantic steamship lines.—Statement of tonnage and revenue accruing to system lines on business from and to Utah points, for fiscal year ending June 30, 1900.	7651	X	4583
53B	.....do.....	Southern Pacific Co., Atlantic steamship lines.—Statement of tonnage and revenue accruing to system lines on business from and to Colorado points, for fiscal year ending June 30, 1900.	7652	X	4584
54	Stubbs (3).....	X, Y, Z exhibits, Southern Pacific Co., Union Pacific Co., Union Pacific and Southern Pacific—Recapitulation of tonnage and revenue.	6689	IX	3970
54A	"Supplemental" Stebbins (2).	Southern Pacific Co., Union Pacific Co., Union Pacific, and Southern Pacific—Total operating revenue, fiscal year ending June 30, 1900, and June 30, 1901, etc.	7676	X	4599

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record.	
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55	Spence.....	Map—Available routes to Colorado and Utah during the year 1901, facing.	.....	IX	4003
55A	"Supplemental" Stebbins (2).	Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Co.–Pacific System, El Paso, Tex., and New Orleans, La., from eastern territories, as specified, for fiscal year ending June 30, 1900.	7656	X	4586
55B	.....do.....	Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.–Pacific System, El Paso, Tex., and New Orleans, La., to eastern territories, as specified, for fiscal year ending June 30, 1900.	7657	X	4587
55C	.....do.....	Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.–Pacific System, El Paso, Tex., and New Orleans, La., from eastern territories, as specified, for fiscal year ending June 30, 1900.	7658	X	4587
55D	.....do.....	Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.–Pacific System, El Paso, Tex., and New Orleans, La., to eastern territories, as specified, for fiscal year ending June 30, 1900.	7660	X	4589
56	Spence.....	Principal available routes between New York and Boston and San Francisco, during the year 1901. (Diagram.)	.....	IX	4003
57	.....do.....	Rates in effect Jan. 25, 1910, in Transcontinental Freight Bureau Westbound Tariff No. 1-J (R. H. Countiss, agent, I. C. C. No. 904), to California terminals.	6570	IX	4007
58	.....do.....	Southern Pacific Co.–Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines by territories, as shown, for fiscal year ending June 30, 1898.	6783	IX	4027
59	.....do.....	Southern Pacific Co.–Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines by territories, as shown, for fiscal year ending June 30, 1900.	6784	IX	4028
60	Munroe (2).....	Westbound Tariff No. 1-J—List of participating carriers.	6816	IX	4048
61	Kruttschnitt (2).	Comparative wages paid employees in years 1897 and 1908.	6874	IX	4090

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
62	Kruttschnitt (2).	Chart—Comparative wages paid certain classes of employees in 1908 and 1897, Union Pacific System.	.....	IX	4090
63	.....do.....	Chart—Comparative wages paid certain classes of employees in 1908 and 1897, Southern Pacific Co.	.....	IX	4090
64	.....do.....	Chart—Comparative prices paid for material used in operations in 1908 and 1897, Union Pacific System.	.....	IX	4090
65	.....do.....	Bulletin No. 81, March, 1909, of U. S. Department of Commerce and Labor, showing prices of certain materials used in railroad operations.	6876	IX	4091
66	.....do.....	Chart—Relative power of wages and commodities to purchase ton mileage and power of ton mileage to purchase commodities and wages, all railroads in United States.	.....	IX	4092
67	.....do.....	Chart—Relative prices of labor and material, and actual earnings per passenger and ton mile of Union Pacific System and Southern Pacific Co. compared with what earnings should be because of depreciation in exchange value of transportation since 1901.	.....	IX	4092
68	.....do.....	Statement—Value to the public of absorption by Union Pacific and Southern Pacific systems of the depreciated purchasing power of money received as freight and passenger fares.	6885	IX	4096
69	.....do.....	Southern Pacific Co.—Earnings per ton mile.	6886	IX	4097
70	.....do.....	Chart, Union Pacific System-Southern Pacific Company—Improvement in physical conditions, etc.	.....	IX	4098
71	.....do.....	Statement—Improvement in physical condition.	6891	IX	4099
72	.....do.....	Union Pacific System—Expenditures for betterments and additions, equipment, and new construction.	6894	IX	4100
73	.....do.....	Southern Pacific Co.—Expenditures for betterments and additions, equipment, and new construction.	6898	IX	4103
74 to 98	....do.....	Photographs (as described by witness).	6903	IX	4107
99	.....do.....	Statement—Betterments and additions to corporations making up the respective through routes, Omaha to San Francisco and New Orleans to San Francisco, for eight years ending June 30, 1909.	6908	IX	4110

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
100	Kruttschnitt (2).	Chart—Improvement in physical condition since June 30, 1901, main line Council Bluffs–Oakland Pier, compared with main line Algiers–San Francisco.	.....	IX	4114
101	.....do.....	Union Pacific System–Southern Pacific Co.—Improvements made annually since 1901.	6921	IX	4118
102	.....do.....	Chart, Union Pacific System–Southern Pacific Co.—Average speed of all freight trains, in miles per hour, and relative number of meeting points of all trains.	.....	IX	4119
103	.....do.....	Chart, Union Pacific R. R.—Relative traffic over main line between Omaha and Ogden, from 1896 to 1909, inclusive.	.....	IX	4123
104	.....do.....	Statement—Union Pacific R. R., main line, Omaha to Ogden, gross ton miles per mile of road, daily train density, meeting points, etc.	6934	IX	4125
105	.....do.....	Effect of increases in speed on freight-train density for given traffic.	.....	IX	4127
106	.....do.....	Chart—Average number of train accidents per 1,000,000 locomotive miles during fiscal year ending June 30, 1904, compared with 1909.	.....	IX	4133
107	.....do.....	Chart—Gross earnings per mile of railroad operated.	.....	IX	4135
108	....do.....	Algiers terminal blueprint (not printed).	6959	IX	4139
109		Galveston terminal blueprint (not printed).			
110	.....do.....	Book of photographs, as described witness (not printed).	6960	IX	4139
111	.....do.....	Profile chart of rail routes from Portland via Huntington and via Roseville to Ogden and Granger (not printed).	6962	IX	4141
112 to 120	Mohler.....	Photographs, as described by witness (not printed).	7045	IX	4192
121 to 127	....do.....	.....do.....	7046–7047	IX	4193
128 to 131	....do.....	.....do.....	7047–7049	IX	4194
132	.....do.....	.....do.....	7050	IX	4195
133	.....do.....	.....do.....	7051	IX	4196
134 to 138	....do.....	.....do.....	7053–7054	IX	4197
139 to 146	....do.....	.....do.....	7054–7055	IX	4198
147 to 152	....do.....	.....do.....	7055–7056	IX	4199

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
153	Mohler.....	Comparative chart showing average speed in miles per hour of merchandise trains; average miles per car per day, all classes of freight service, January, 1907, to February, 1909; average speed in miles per hour of all through passenger trains on roads named, 1909; average miles per car per day.	.....	IX	4268
154	O'Brien.....	Oregon R. R. and Navigation Co.—Statement of expenditures for additions, betterments, and improvements from July 1, 1900, to June 30, 1909.	7272	IX	4334
155	.....do.....	Oregon R. R. and Navigation Co.—Renewal of rails, main line.	7273	IX	4335
156	.....do.....	Oregon R. R. and Navigation Co.—Renewals of rails, branches.	7275	IX	4336
157	.....do.....	Oregon R. R. and Navigation Co.—Sidetracks, ballasting, tieplates, turntables.	7276	IX	4337
158	.....do.....	Oregon R. R. and Navigation Co.—Automatic block signals, fuel-oil plants, track scales, fencing.	7278	IX	4338
159	.....do.....	Oregon R. R. and Navigation Co.—Statement of improvements and betterments from July 1, 1900, to June 30, 1909.	7280	IX	4340
160	.....do.....	Oregon R. R. and Navigation Co.—New steel bridges erected, etc.	7281	IX	4341
161	.....do.....	Oregon R. R. and Navigation Co.—Locomotive equipment, etc.	7282	IX	4342
162	.....do.....	Oregon R. R. and Navigation Co.—Freight equipment.	7284	IX	4343
163	.....do.....	Oregon R. R. and Navigation Co.—Statement of expenditures for additions, betterments, and improvements from July 1, 1909, to Nov. 30, 1909.	7285	IX	4344
164	.....do.....	Oregon R. R. and Navigation Co.—Statement of important new work started and now under way, dating from Nov. 30, 1909.	7286	IX	4344
165	.....do.....	Oregon R. R. and Navigation Co.—Statement of new lines constructed and now under way, July 1, 1900, to Jan. 1, 1910.	7287	IX	4345
166	.....do.....	Oregon R. R. and Navigation Co.—Statistics of freight and passenger traffic moved year 1900 compared with year 1909.	7288	IX	4346
167	.....do.....	Oregon R. R. and Navigation Co.—Average consist of through passenger trains, Jan. 1, 1900, to Jan. 1, 1910.	7289	IX	4346
168 to 175	.....do.....	Photographs, as described by witness (not printed).	7290	IX	4347
176	.....do.....	Photograph, as described by witness (not printed).	7291	IX	4348

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
177	O'Brien.....	Southern Pacific Co., lines in Oregon—Statement of expenditures for additions, betterments, and improvements, from July 1, 1904, to June 30, 1909.	7292	IX	4348
178	.....do.....	Southern Pacific Co., lines in Oregon—Statement showing mileage of the different weights of steel rails in the track on July 1, 1904, as compared with June 30, 1909.	7293	IX	4349
179	.....do.....	Southern Pacific Co., lines in Oregon—Ballasting, tie plates.	7295	IX	4350
180	.....do.....	Southern Pacific Co., lines in Oregon—New steel bridges erected and wooden structures replaced by steel structures or embankment, July 1, 1904–June 30, 1909.	7296	IX	4351
181	.....do.....	Southern Pacific Co., lines in Oregon—Automatic block signals, fuel oil plants, track scales.	7279	IX	4351
182	.....do.....	Southern Pacific Co., lines in Oregon—Turntables.	7298	IX	4353
183	.....do.....	Southern Pacific Co., lines in Oregon—Fencing and cattle guards, sidetracks.	7299	IX	4353
184	.....do.....	Southern Pacific Co., lines in Oregon—Locomotive equipment, etc.	7300	IX	4354
185	.....do.....	Southern Pacific Co., lines in Oregon—Statement of expenditures for additions, betterments, and improvements, from July 1, 1909, to Nov. 30, 1909, and of important new work started and now under way, dating from Nov. 30, 1909.	7301	IX	4355
186	.....do.....	Southern Pacific Co., lines in Oregon—Statement of new lines constructed and under way June 30, 1904, to June 30, 1909.	7302	IX	4356
187	.....do.....	Southern Pacific Co., lines in Oregon—Average consist of through passenger trains, Jan. 1, 1900, to Jan. 1, 1910.	7303	IX	4357
188	.....do.....	Southern Pacific Co., lines in Oregon—Statistics of freight and passenger traffic moved year 1900, compared with year 1909.	7304	IX	4357
189 to 197	.....do.....	Photographs, as described by witness (not printed).	7305–6	IX	4358
198	.....do.....	Southern Pacific Co., lines in Oregon—Bridge work.	7306	IX	4359
199 to 201	.....do.....	Photographs, as described by witness (not printed).	7307	IX	4359
202 to 204	.....do.....	.....do.....	7308	IX	4360
205	.....do.....	Southern Pacific Co., lines in Oregon—Statement of new lines constructed and under way July 1, 1904, to June 30, 1909.	7310	IX	4361

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
206	O'Brien.....	Southern Pacific Co., lines in Oregon—Statement of improvements and betterments from July 1, 1904, to June 30, 1909.	7311	IX	4362
207	.....do.....	Oregon R. R. and Navigation Co.—Statement of improvements and betterments from July 1, 1900, to June 30, 1909. (Exhibit G.)	7316	IX	4365
208	.....do.....	.....do. (Exhibit H.).....	7321	IX	4369
209	.....do.....	.....do. (Miscellaneous).....	7324	IX	4371
210	.....do.....	Oregon R. R. and Navigation Co., branches—Detail of loss and gain in branch-line mileage, shown on Exhibit —, rail renewals, July 1, 1900, to June 30, 1909.	7362	IX	4537
211	Brewer.....	Statement showing physical condition of Oregon Short Line R. R., July 1, 1899, as compared with its condition July 1, 1909.	7417	X	4433
212	.....do.....	Oregon Short Line R. R. Co.—Statement showing mileage and estimated cost of sidetracks and second track built, authorized and proposed for the period June 30, to Dec. 31, 1909.	7436	X	4443
213	.....do.....	Oregon Short Line R. R. Co.—Business handled by Oregon Short Line R. R. Co. between years 1900 and 1909, inclusive.	7437	X	4444
214 to 228	.....do.....	Photographs as described by witness (not printed).	7439	X	4445
229	Bartholomew	Southern Pacific Co., Atlantic Steamship Lines.—Statement of tonnage and revenue accruing to system lines on business from and to Utah points for years shown.	7687	X	4607
230	.....do.....	Southern Pacific Co., Atlantic Steamship Lines.—Statement of tonnage and revenue accruing to system lines on business from and to Colorado points for years shown.	7688	X	4608
231	Plaisted.....	Sheep movement map (not printed).	7695	X	4612
232	McCormick.....	Passenger train service via Ogden route.	7795	X	4671
233	Lomax.....	Time of through passenger trains run in February, 1901.	7842	X	4699
234	.....do.....	Time of through passenger trains run in February, 1910.	7844	X	4700
235	.....do.....	Equipment passenger trains, Feb. 1, 1901.	7845	X	4700
236	.....do.....	Equipment of through Union Pacific passenger trains, Feb. 1, 1910.	7848	X	4702
237	.....do.....	Comparison of through passenger train time, Feb. 1. 1901 and 1910.	7851	X	4704
238	Kelly.....	Articles of incorporation of Utah and Pacific R. R. Co.	7972	X	4776
239	.....do.....	Assignment to Utah and Pacific R. R. Co.	7982	X	4782

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
240	Kelly.....	Articles of association of Utah, Nevada and California R. R. Co.	7992	X	4788
241	.....do.....	Chapter 530, statutes of California, 1907.	8026	X	4807
242	.....do.....	Agreement between Southern Pacific Co. and San Pedro, Los Angeles and Salt Lake R. R. Co., Apr. 15, 1907.	8033	X	4810
243	.....	Statement showing additional main tracks of Atchison, Topeka and Santa Fe Ry. Co., year ending June 30, 1909.	8119	X	4867
244	.....	Mileage of Northern Pacific Ry. Co. and controlled lines, June 30, 1909.	8121	X	4868
244½	.....	Map, Northern Pacific Ry. Co. (not printed).	8125	X	4869
245	.....	Track statement Great Northern Ry. and proprietary companies.	8125	X	4870
246	.....	Map, Great Northern Ry. Co. (not printed).	8126	X	4870
247	Mahl, (2).....	UnionPacific Ry. Co.—Statement of stocks of St. Joseph and Grand Island Ry. Co., owned.	8127	X	4871
248	.....do.....	Union Pacific Ry. Co.—Investment stocks owned Mar. 4, 1910.	8128	X	4871
249	Stebbins (3)	Southern Pacific Co., Atlantic S. S. Lines.—Statement of tonnage and revenue accruing to system lines on business received from China and Japan for fiscal year ending June 30, 1900.	8146	XI	4883
250	.....do.....	Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Granger, Wyo., and Portland, Oreg., from eastern territories specified for fiscal year ending June 30, 1900.	8147	XI	4883
251	.....do.....	Statement of total freight traffic from points in Willamette Valley (excluding Portland), via Union Pacific System, Portland, Oreg., and Granger, Wyo., to eastern territories as specified, for fiscal year ending June 30, 1900.	8156	XI	4891
252	.....do.....	Statement of total freight traffic from points in Willamette Valley (excluding Portland), via Southern Pacific Co.-Pacific System and Rio Grande Western Ry. to Missouri River and east, for fiscal year ending June 30, 1900.	8159	XI	4893
253	.....do.....	Statement of total freight traffic to points in Willamette Valley (excluding Portland), via Rio Grande Western Ry. and Southern Pacific Co.-Pacific System from Missouri River and east, for fiscal year ending June 30, 1900.	8162	XI	4895

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
254	Stebbins (3)	Statement of freight traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, having origin or destination on the line of Southern Pacific Co. north of Ashland, Oreg., and south of Portland, Oreg., for the calendar year 1900.	8166	XI	4898
255	.....do.....	Tonnage and revenue of freight traffic between San Francisco and points in Oregon, Washington, Idaho, and Montana, as specified, via Southern Pacific Co. and the Oregon R. R. and Navigation Company, for year ending June 30, 1900.	8168	XI	4899
256	.....do.....	Tonnage and revenue of freight traffic between San Francisco and Montana common points, via Southern Pacific Co. and Oregon Short Line R. R. Co., for year ending June 30, 1900.	8170	XI	4901
257	.....do.....	Statement of freight traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, for the years ending June 30, 1900, and 1901.	8172	XI	4903
258	.....do.....	Statement of passenger traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, for the year ending June 30, 1901.	8174	XI	4904
259	.....do.....	Statement of revenue from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.	8176	XI	4905
260	.....do.....	Southern Pacific Co. lines—Statement of revenues from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.	8178	XI	4907
261	Lincoln.....	Average miles per car per day on Union Pacific, Atchison, Topeka and Santa Fe, Great Northern, Northern Pacific, Central Pacific, Texas and Pacific, Chicago, Rock Island and Pacific, and Denver and Rio Grande, 1907–1909, taken from statistical bulletin prepared by chairman of committee of relations between railroads, American Railroad Association.	8189	XI	4913
262	Ives.....	Letter from W. A. Drake to Epes Randolph, Apr. 23, 1907.	8219	XI	4932
263	.....	Southern Pacific Co.—Memorandum in respect of disposition of proceeds from sale of two five-year 4½ per cent bonds.	8238	XI	4934

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Original page.	Printed record. Vol.	Page.
264	.....	Statement of mileage, February, 1901, Ogden to Roseville, Roseville to Portland, Roseville south to California and Arizona line, Southern Pacific lines in Arizona to Mexico, Texas, Louisiana, etc.	8240	XI	4944
		San Pedro, Los Angeles and Salt Lake R. R. Co., and W. A. Clark's Exhibit 1 (Clark), San Pedro, Los Angeles and Salt Lake R. R. Co., class rates between Los Angeles and Utah common points.[a]	1138	XI	669

[a] Same exhibit indexed, ante p. 5098.

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Volume XII.
(PLEADINGS, ORDERS, ETC.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911

No. 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

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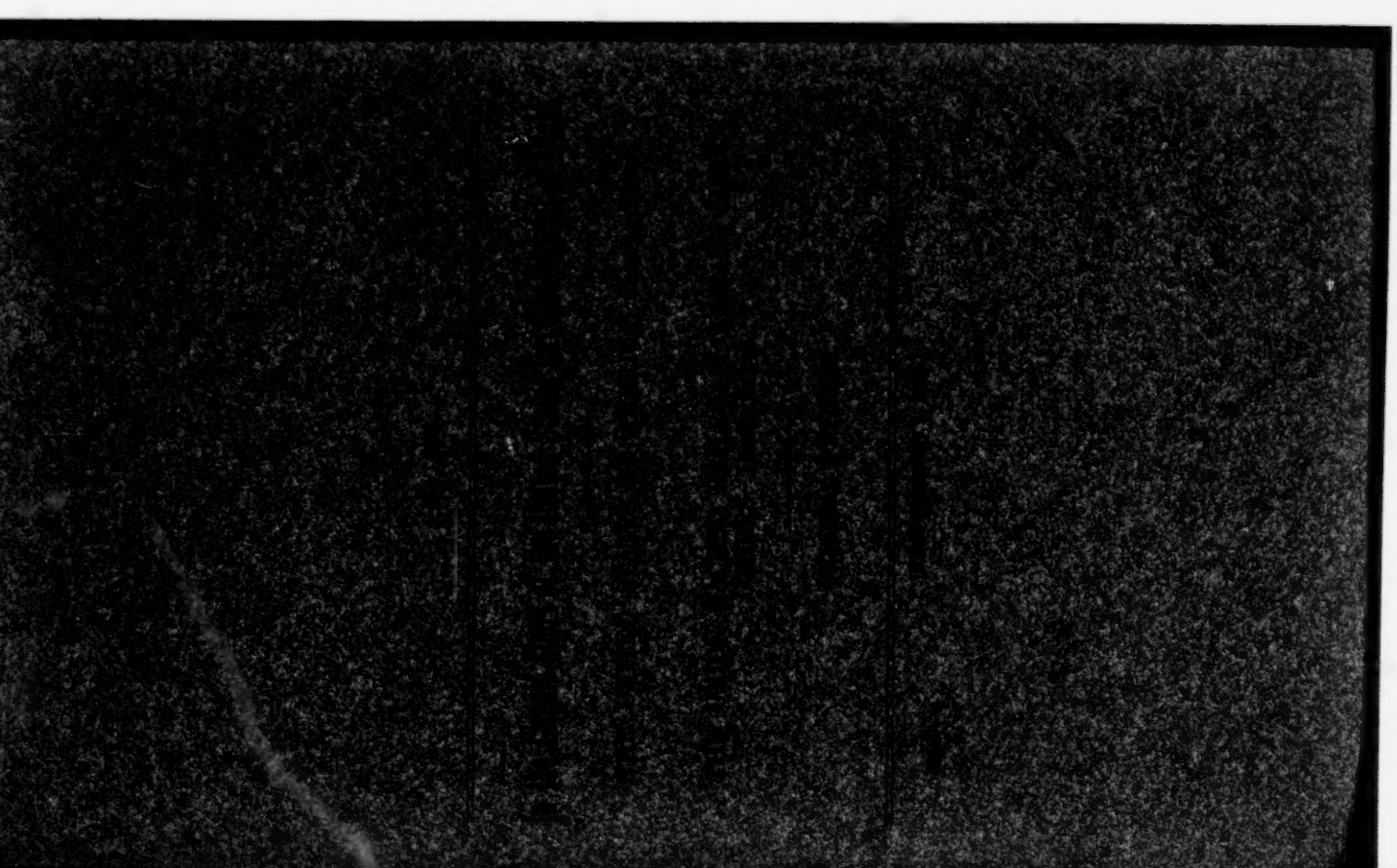

United States Circuit Court, District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

THE UNION PACIFIC RAILROAD COMPANY, THE OREGON SHORT LINE RAILROAD COMPANY, THE OREGON RAILROAD & NAVIGATION COMPANY, THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE SOUTHERN PACIFIC COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, FARMERS' LOAN & TRUST COMPANY, EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, AND WILLIAM A. CLARK, DEFENDANTS.

IN EQUITY.

PETITION.

To the judges of the Circuit Court of the United States for the district of Utah.

Now comes the United States of America, by Hiram E. Booth, the United States attorney for the district of Utah, acting under direction of the Attorney-General of the United States, and brings this its proceeding by way of petition against the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Railroad & Navigation Company, a corporation organized and existing under the laws of the State of Oregon;

The San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas;

The Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky;

The Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin;

The Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota;

The Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York;

Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, citizens of the State of New York and residents of New York City;

Henry C. Frick, a citizen of the State of Pennsylvania and resident at Pittsburg in said State; and

William A. Clark, a citizen of the State of Montana and resident at Butte, in said State, and complains and says:

I.

The defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Atchison Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, and Great Northern Railway Company were, at the times hereinafter mentioned, and now are, common carriers employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce among the several States and with foreign nations.

II.

That from and after January 1, 1901, the defendants, Edward H. Harriman, Jacob H, Schiff, Otto H. Kahn, and James Stillman, with certain other persons who have joined with them from time to time, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company;

That during all of said time the said defendant, Edward H. Harriman, has been, and still is, the chairman of the executive committee

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of the board of directors of said company, and since October, 1903, he has likewise been, and still is, the president of said corporation;

That the said Jacob H. Schiff, Otto H. Kahn, and James Stillman were, from a time prior to said January 1, 1901, and until the year 1906, directors of said corporation;

That said James Stillman has continued to be a director thereof, and that during all of said period, and until the year 1906, the said Otto H. Kahn and said Stillman were members of the said executive committee of said corporation, and said Stillman is still a member thereof;

That during all of said time the said Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm of the city of New York, doing business under the firm name and style of Kuhn, Loeb & Co., which said banking house is, and during all the times above stated has been, the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases and sales of stocks and bonds hereinafter mentioned have been made;

That said defendant, Henry H. Rogers, has been a director of said corporation since the year 1902, and that said defendant, Henry C. Frick, has been a director of said corporation since the year 1904, and both said parties are still members of said board of directors;

That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members to act in such manner as such committee should deem best for the company's interest in all cases in which specific directions shall not have been given by the board; and it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session;

That pursuant to such by-laws the said defendant Harriman has, with the concurrence and assistance of said individual defendants, other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company.

III.

The defendant Union Pacific Railroad Company is, and during all of said times has been, the owner of lines of railway extending from Council Bluffs, Iowa, to Ogden, Utah; from Julesburg, a point on said line, to Denver, Colo.; from Denver to Cheyenne, Wyo., and a line from Kansas City, Mo., to Denver;

That the predecessor of the said Union Pacific Railroad Company was organized under the act of Congress approved July 2, 1862 (12

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Stat., 489). Its charter was thereafter amended by the acts of July 2, 1864 (13 Stat., 356), February 24, 1871 (16 Stat., 430), and other acts. It constructed a line of railway from a point in Council Bluffs, Iowa, through Cheyenne, Wyo., to Ogden, Utah, with a branch from Julesburg to Denver, Colo.;

That the Kansas Pacific Railway Company was previously incorporated by special act of Congress as the Leavenworth, Pawnee & Western Railroad Company (subsequently the Union Pacific Railroad Company, eastern division), and constructed a line of railway from Kansas City, Mo., to Denver;

That the Denver Pacific Railway & Telegraph Company was incorporated under the laws of Colorado, and constructed the line of railroad from Denver to Cheyenne;

That these railways were consolidated under the said act of Congress of 1862 into the Union Pacific Railway Company;

That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, Cal., to Ogden, Utah;

That the Western Pacific Railroad Company was organized also under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, Cal., and that these two latter corporrations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to Ogden, at which point it connected with the main line of said Union Pacific Railroad Company;

That these lines of railroad were constructed by Government aid, consisting of land grants of 10 sections per mile of road, and Government bonds secured by a second mortgage upon the railways in the sum of $16,000 per mile in open country, $48,000 per mile for 300 miles of the railroad most mountainous and difficult of construction, and $32,000 per mile for the balance of the mountainous railroad;

That by the act of Congress approved July 2, 1864, the said lines of railway receiving said aid, to wit, the Central Pacific Railroad Company, the Western Pacific Railroad Company, the Union Pacific Railway Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, constituting all of the said lines from Council Bluffs and from Kansas City, through Denver, Cheyenne, Ogden, and Sacramento, to San Francisco, were required to operate their lines as one continuous line, without discrimination against or in favor of any or either of said companies;

That in and by section 15 of said act of Congress approved July 2, 1864, it was, among other things, provided "That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of commu-

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nication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

That by the act of Congress approved June 20, 1874 (18 Stat., 111), this provision was in substance reenacted, and any officer or agent of the companies refusing to operate and use the said railroads for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, without discrimination as aforesaid, was declared to be guilty of a misdemeanor, punishable by fine and imprisonment; and any party injured was authorized to sue for damages or to procure an injunction to enforce its provisions.

That the Oregon Short Line Railroad Company is, and during all of said times has been, the owner of a line of railway extending from a junction with said main line of the Union Pacific at Granger, Wyo., to Huntington, Oreg.; also a line from Salt Lake City, Utah, to Butte, Mont.;

That the defendant Oregon Railroad & Navigation Company is, and during all of said times has been, the owner of a line of railroad from said Huntington, Oreg., to Portland, Oreg.;

That all three of said lines of railway are the owners of important branch lines in various States; that substantially all the stock of said Oregon Short Line Railroad Company is, and during all said times has been, owned by said Union Pacific Railroad Company, and that substantially all the stock of said Oregon Railroad & Navigation Company is, and during all of said times has been, owned by said Oregon Short Line Railroad Company and said Union Pacific Railroad Company, and that by means of such stock ownership said Union Pacific Railroad Company has at all times controlled and managed the said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company, and the lines of said three corporations have composed and still compose through main lines of track from Council Bluffs, Iowa, and Kansas City, Mo., upon the Missouri River, to said city of Portland, Oreg.;

That in the year 1901 said Oregon Railroad & Navigation Com pany was the owner of a line of steamships plying between said Portland, Oreg., and San Francisco, Cal., by way of the Willamette and Columbia rivers and the Pacific Ocean; and through the ownership of the stock of a corporation to which said steamship line has been conveyed still owns the same; and also was and still is the owner of the stock of a corporation known as the Portland & Asiatic Steam-

ship Company, which was running and still runs a line of steamships from said Portland to Japan, China, and other points of the Orient, and the said lines of steamships constitute, with said railway lines, through routes for the transportation of property and persons, both among the several States and with foreign nations;

That the Southern Pacific Company was on said January 1, 1901, and still is the owner and in control by and through its ownership of the stock of various connecting lines of a line of railway extending from New Orleans, in the State of Louisiana, through said State and the State of Texas, the Territories of New Mexico and Arizona, and the States of California and Oregon, to said Portland;

That said Southern Pacific Company also owned and still owns a line connecting with said through lines ending at Galveston, Tex., upon the Gulf of Mexico, and in connection with its lines of railroad so reaching New Orleans and Galveston it owned and operated and still owns and operates a line of steamships running from said ports to Habana, Cuba, and to the city of New York;

That then and now the said Southern Pacific Company was and is also the owner of all the capital stock of the Central Pacific Railroad Company, a corporation organized and existing under the laws of California, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the corporation of the same name, to wit, Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company then and now in all respects controls the operation and management of the affairs and business of said Central Pacific Railroad Company;

And was and still is also the owner of a majority of the stock of the Pacific Mail Steamship Company, which latter company operates a line of steamships from San Francisco to the Hawaiian and Philippine islands, China, Japan, and other oriental ports, and also a line of steamers from San Francisco to Panama, which, with the lines of the Panama Railroad Company crossing the Isthmus, and ships running in connection therewith, constitutes a through line from New York to San Francisco;

That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States, both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the lines of said Union Pacific Rail-

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road Company for a large amount of traffic originating in the Atlantic coast and Central states;

That the rail line of said Southern Pacific Company from San Francisco to Portland was in active competition with the ships plying between San Francisco and Portland and owned by said Oregon Railroad & Navigation Company, as hereinbefore alleged;

That the said ships of the Portland and Asiatic Steamship Company, in connection with the rail lines of said Union Pacific Railroad Company and its subsidiary companies, as hereinbefore alleged, running from Portland, Oreg., to the East, were in active competition with the ships of said Pacific Mail Steamship Company and the rails of said Southern Pacific Company running to the East from San Francisco;

That the line of railroad composed of the tracks of said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company between Ogden, Utah, and Portland, Oreg., were in active competition with the lines of said Southern Pacific Company between said points;

That the rail lines of the said Southern Pacific Company were in active competition with the ships and rail lines of the said Oregon Railroad & Navigation Company for a large amount of traffic between San Francisco and points in Montana, Idaho, and other States.

That the competition hereinbefore alleged between the system of railroads and steamships owned and controlled by said Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by said Southern Pacific Company was substantial and included a large volume of traffic, both freight and passenger.

That the Atchison, Topeka & Santa Fe Railway Company has been for a period of more than eight years last past the owner and in control, by direct ownership and by the ownership of the stock of railway companies owning a portion of said lines and by lease, of a line of railway reaching from Chicago, in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico, Arizona, and the State of California to the city of San Francisco and to tide water at San Diego, Cal.; that said line of railway touches the Union Pacific at Kansas City, Mo., and is and during all said times has been competitive with said Union Pacific Railroad Company and said Southern Pacific Company for a large traffic to and from the Pacific coast and the Orient, to and from various points in the east and the Mississippi valley and in the State of Colorado and other interior States;

That the tracks of said Atchison, Topeka & Santa Fe Railway Company cross the continent between those of the Southern Pacific Company and the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter referred to, constituted the only outlet to the East by rail from all the territory along the Pacific coast south of Portland, Oreg., to the Mexican border, other than the lines of said Union Pacific Railway Company and said Southern Pacific Company.

Italicized paragraph inserted by amendment under order of court, with the provision that the said allegation should be considered denied by all of the defendants without amendment to the several answers.

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That the said Atchison, Topeka & Santa Fe Railway Company was for a number of years engaged in operating a line of steamships to oriental ports from said port of San Diego, Cal., and said line of ships, with its rail connections by way of the tracks of said Atchison, Topeka & Santa Fe Railway Company, was in active competition with the steamship and rail lines of said Union Pacific Railroad Company and the Southern Pacific Company hereinbefore described;

That the traffic that was so competitive between said Southern Pacific and Union Pacific and said Atchison, Topeka & Santa Fe was and is of great volume, both passenger and freight;

That the Northern Pacific Railway Company and the Great Northern Railway Company are each the owners of lines of railway extending from ports upon Lake Superior in the States of Wisconsin and Minnesota, and from the city of St. Paul in the State of Minnesota, through and across the States of Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, and said railroad corporations are the joint owners of substantially all the stock and are in control of the Chicago, Burlington & Quincy Railroad Company, a corporation which is the owner of a vast system of rail lines connecting with the lines of the Northern Pacific Railway Company at Billings, Mont., and at St. Paul, and with the lines of the Great Northern Railway Company at St. Paul, running thence to the cities of Chicago, St. Louis, Mo., Kansas City, Denver, and Omaha, Nebr., and crossing portions of the States of Minnesota, South Dakota, Iowa, Illinois, Wisconsin, Missouri, Nebraska, Kansas, Colorado, and Wyoming, and the lines of said Northern Pacific Railway Company and said Chicago, Burlington & Quincy Railroad Company are and have by the Supreme Court of the United States been held to be competitive with the lines of the said Union Pacific Railroad Company for a large amount of traffic, both passenger and freight.

That as to an extensive traffic between various points in the Eastern and Central States and the Pacific coast and the Orient the said Northern Pacific and Great Northern Railway Companies, together with their connections and the steamship lines controlled by them, are and at all times have been competitors for business with said Union Pacific Railroad Company and its connections so owned by it.

That the said San Pedro, Los Angeles & Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro, a port on the Pacific Ocean in the State of California, thence by way of Los Angeles through the States of California, Nevada, and Utah, to the city of Salt Lake in said State of Utah.

That a large part of said line is controlled by said corporation by direct ownership and a small portion thereof in southern California by lease, but the same constitutes a continuous line between said

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points, and the same would have been, but for the suppression of competition hereinafter alleged, at all times since its construction, by reason of its location and its connection with said Oregon Short Line Railroad Company at Salt Lake City and its connection with the lines of the Denver & Rio Grande Railway Company at the same place, which latter company owns a line of railway from Salt Lake City to Denver, a competitor with said Southern Pacific Company and said Union Pacific Railroad Company.

IV.

That in the spring of 1901 the said defendants Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, and the defendant Union Pacific Railroad Company, contriving and intending unlawfully to restrain the trade and commerce among the several States and between said States and foreign countries carried on by said Union Pacific Railroad Company, said Southern Pacific Company, and said other competing lines of railway and steamships, as hereinbefore alleged, and contriving and intending unlawfully to monopolize and attempt to monopolize such trade and commerce, and contriving and intending unlawfully to restrain and prevent competition among said railway systems and steamship lines in respect to such interstate and foreign trade and commerce, and contriving and intending unlawfully to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce theretofore enjoyed through the independent competition of said railway systems and steamship lines, unlawfully entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and said other transcontinental railway companies and said steamship lines, and to place restraint upon all competitive interstate and foreign trade and commerce carried on by them, and to monopolize and attempt to monopolize the same, and to suppress the competition theretofore existing between the same in said interstate and foreign trade and commerce through their instrumentality and by the means following, to-wit:

That said firm of Kuhn, Loeb & Co., acting through said defendants Schiff and Kahn, and with the assistance of said defendant Harriman, acquired 750,000 shares of the stock of said Southern Pacific Company, of the par value of $75,000,000, out of a total issue then outstanding of $197,847,788, which said stock was acquired for the purpose of turning the same over to said Union Pacific Railroad Company, so that the same might be held in the treasury of said company and voted by it, for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had

theretofore existed between said Union Pacific system and said Southern Pacific system;

That said stock was, on or about March 4, 1901, duly delivered to said Union Pacific Company, pursuant to said conspiracy, and said company either by itself or by its subsidiary company, the Oregon Short Line Railroad Company, has since been in possession and ownership thereof, and has voted the said shares of stock at all the stockholders' meetings of said Southern Pacific Company;

That thereafter, with the like purpose of suppressing competition and placing restraint upon all competitive interstate and foreign trade and commerce, and monopolizing and attempting to monopolize the same, and for the purpose of rendering more certain and secure the efforts theretofore made, as above stated, by the acquisition of the said 750,000 shares of said stock, said conspirators further acquired for, and said Union Pacific Railroad Company obtained, an additional 150,000 shares of stock of said Southern Pacific Company, which were likewise placed in the treasury of said company, making an aggregate of 900,000 shares of stock of said Southern Pacific Company so acquired for the purpose and in the manner above stated;

That all of the said stock has since been voted by said Union Pacific Railroad Company, or under its direction, at all meetings of stockholders of said Southern Pacific Company, with the end and for the purpose of restraining trade and commerce and eliminating competition and monopolizing and attempting to monopolize such interstate and foreign commerce, as hereinbefore averred;

That thereafter the said defendants Harriman, Schiff, Kahn, and Stillman, and said Union Pacific Railroad Company caused to be issued by said Southern Pacific Company $39,563,300 par value of preferred capital stock of said Southern Pacific Company, which was subscribed for by the various stockholders of said Southern Pacific Company in proportion to their holdings of common stock;

That said Union Pacific Railroad Company, for the purpose above stated, and with intent to insure the success of said attempt to restrain interstate and foreign commerce and monopolize the same, subscribed for, took, and now has in its possession, the proportion or percentage of such preferred stock to which the said 900,000 shares of common stock was entitled under said plan, to-wit: $18,000,000 par value thereof, and has since its said issue at all times voted the same at all meetings of said Southern Pacific Company;

That the said 750,000 shares of Southern Pacific common stock was, in the first instance, acquired directly by said Union Pacific Railroad Company, but for convenience in financing, or other reasons unknown to complainant, the said stock was in form turned over to the said defendant Oregon Short Line Railroad Company, and the said additional common stock and the said eighteen millions of preferred stock

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are now in form in the treasury of said Oregon Short Line Railroad Company, but, as hereinbefore averred, are controlled and voted as directed by said Union Pacific Railroad Company, which owns the stock of said Oregon Short Line Railroad Company, and controls the management, operation, and business affairs thereof, and the said stock and all of the same is now in form so voted by said Oregon Short Line Railroad Company, but at the dictation and instance of said Union Pacific Railroad Company, the said Harriman, Stillman, Schiff, and Kahn, for the purpose of choosing boards of directors who will act in subservience to the management of said Union Pacific Railroad Company, to the end that competition in interstate and foreign commerce may be restrained and such business be monopolized and attempted to be monopolized, as hereinbefore set forth;

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, the exact number being unknown to complainant, but that by reason of the fact that such stock is so scattered in small blocks the full amount of such stock is not and never has been at any meeting, and, according to ordinary business usage and experience, never will be, voted at any such meeting, for which reason the said stock so controlled by said Union Pacific Railroad Company has constituted a majority of the stock present at each and every meeting of the stockholders of said Southern Pacific Company since the year 1902, and will continue to constitute such majority if said stock remains the property of said Oregon Short Line Railroad Company, and the said Union Pacific Railroad Company by and through said Oregon Short Line Railroad Company has controlled the said meetings and has elected such boards of directors as have been selected by said railroad company and said Harriman, Stillman, Kahn, and Schiff;

That said conspirators, after the acquisition of such control of said Southern Pacific Company, at all times caused to be elected successive boards of directors of said company, a majority of whom were also directors of said Union Pacific Railroad Company; that said Harriman was made the chairman of the executive committee of said Southern Pacific Company and still fills such office;

That said Southern Pacific Company has conferred upon such executive committee and upon the chairman thereof the same powers as the like committee and the like officer enjoy in the case of the Union Pacific Railroad Company, as hereinbefore set forth; that the said Harriman was by said conspirators caused to be elected, and he still is, the president of said Southern Pacific Company;

That the said Union Pacific Railroad Company and Southern Pacific Company have and for several years last past have had common traffic officials, operating officials, purchasing agents, and commercial agents, and in all respects the said lines of railway controlled by said

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corporations respectively, as hereinbefore set forth, are operated and have since the year 1901 been operated as one single entire system;

That the management of the said steamship lines has been amalgamated, and that the competition formerly existing between the said two railway systems, with their steamships, as hereinbefore set forth, has been destroyed, and the said interstate and foreign commerce which was originally and prior to the acts herein complained of the subject of competition has been monopolized in the hands and under the control of the said Union Pacific Railroad Company and its subsidiary corporations and its officials;

That each and every of the acts hereinbefore complained of were done and performed by the said Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company for the purpose and with the intent and result of monopolizing trade and commerce both among the States and with foreign nations and with the intent and result of suppressing and eliminating all competition between said companies.

V.

Complainant further avers that pursuant to the said conspiracy so formed to restrain trade and commerce among the several States and with foreign nations, and of monopolizing and attempting to monopolize the same, and to suppress the competition theretofore existing between the various railway systems and water lines hereinbefore described, and for the purpose of further effectuating such restraint and creating such monopoly, the said defendants, Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and other parties to complainant unknown, did, in the spring of 1901, also cause the said Union Pacific Railroad Company to acquire a majority of the stock of said Northern Pacific Railway Company, meaning and intending thereby to destroy the competition theretofore existing between said Northern Pacific Railway system and said Union Pacific Railroad system, and also between the latter and the lines of the Chicago, Burlington & Quincy Railway Company hereinbefore described;

That the said purchase of stock was made in form by said Oregon Short Line Railroad Company, but said company acted at the instance of said Union Pacific Railroad Company and said other parties, and the money employed in said purchase was furnished by the said Union Pacific Railroad Company, and said purchase was made solely for the purpose of suppressing competition, restraining trade, and creating monopoly pursuant to the conspiracy hereinbefore alleged;

That after the acquisition of said stock of the said Northern Pacific Railway Company there was formed under the laws of the State of New Jersey a corporation called the Northern Securities

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Company, which latter corporation was organized for the purpose, among other things, of taking over as a holding company a majority or all the stock of said Northern Pacific Railway Company and said Great Northern Railway Company;

That, acting in unison and harmony with the parties promoting said Northern Securities Company, the defendants, Harriman, Schiff, Kahn, Stillman, and the Union Pacific Railroad Company, and their associates, caused said Oregon Short Line Railroad Company to sell to said Northern Securities Company all of the stock in said Northern Pacific Railway Company so acquired, amounting to $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock out of a total issue of $155,000,000 par value, and said Oregon Short Line Railroad Company received from said Northern Securities Company for said stock so transferred to it, in addition to a certain amount of cash, shares of said Northern Securities Company aggregating $82,491,871 par value, which said shares were issued in the name of the defendant Harriman and one Winslow S. Pierce, who was the counsel for the said Union Pacific Railroad Company, who, however, had no personal interest in the said shares, but held the same for the benefit and on account of the said Oregon Short Line Railroad Company and pursuant to the conspiracy above averred;

That the said preferred stock of the Northern Pacific Railway Company was, pursuant to the charter and terms upon which said stock was issued, duly retired and an additional issue of common stock in the same amount was made, so that the par value of the stock of said Northern Pacific Railway Company remained at $155,000,000, but the same was all in one class, to wit, common stock;

That thereafter an action was duly brought by the complainant, United States of America, against the said Northern Securities Company and others in the United States circuit court for the district of Minnesota, in which said cause a decree was duly entered, adjudging that the said holding of the stocks of the Northern Pacific Railway Company and the Great Northern Railway Company was illegal, as in restraint of trade and in violation of the act of Congress approved July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," which said decree was affirmed by the Supreme Court of the United States (193 U. S., 197);

That thereafter the board of directors of said Northern Securities Company adopted resolutions for the distribution of the shares of the capital stock of the Northern Pacific Railway Company and of the Great Northern Railway Company among the shareholders of it, the said Northern Securities Company, pro rata, but that the said defendants and their associates who had so caused the shares of said

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Northern Pacific Railway Company to be acquired for the purposes above stated, opposed and protested against the said proposed distribution among the shareholders of said Northern Securities Company, and the said defendants, Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce, in whose name jointly with said Harriman the said shares had been registered, together with the Equitable Trust Company, a corporation of New York, with whom said shares had been deposited as trustee to secure obligations of said Oregon Short Line Railroad Company, exhibited a bill of complaint against said Northern Securities Company in the circuit court of the United States for the district of New Jersey, praying for an injunction to restrain the said pro rata distribution and a decree that they were entitled to the return and transfer to them by said Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company which were so delivered to said securities company by said Harriman and Pierce, and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted in exchange for the certificates of stock of the Northern Securities Company so issued to and held by the complainants in such suit;

That in said action a decree was entered by the said circuit court granting the injunction prayed (132 Fed. Rep., 464); from this order an appeal was prosecuted to the circuit court of appeals for the third circuit, which in all things reversed the decree of the court below (134 Fed. Rep., 331); thereupon the said cause was removed to the Supreme Court of the United States by certiorari, and the decree of the circuit court of appeals was affirmed and the cause was remanded to the circuit court with directions to dismiss the bill of complaint;

That the decision by the Supreme Court of the United States that the said parties were not entitled to relief was in part placed upon the ground that the said Northern Pacific system, in connection with the system of the Chicago, Burlington & Quincy Railway Company, above referred to, was competitive with the Union Pacific Railroad system, and the delivery to the complainants in said cause of a majority of the total Northern Pacific Railway Company stock would be in violation of said act of July 2, 1890 (197 U. S., 244, 297);

That the said defendants, Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, and their associates, caused the said action last above described to be prosecuted for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States, and with foreign nations, as hereinbefore more fully set forth;

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That after the said decision of the Supreme Court of the United States the said Northern Securities Company proceeded with the distribution of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company, as proposed, and said Oregon Short Line Railroad Company received many million dollars par value of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company;

That a certain amount of the said stocks have been since disposed of by said Oregon Short Line Railroad Company, but that it is still the owner of large amounts of the same, as complainant is informed and believes, which said shares, and each and all of them, are illegally held by said Oregon Short Line Railroad Company as the agent and representative of said conspirators, and are held pursuant to the said conspiracy and not otherwise.

VI.

Complainant further avers that prior to the year 1902 the defendant, William A. Clark, together with certain associates, caused to be incorporated the said defendant San Pedro, Los Angeles & Salt Lake Railroad Company for the purpose of acquiring and constructing an independent competing line of railway from tide water at San Pedro, Cal., through Los Angeles, and across the States of California and Nevada and a portion of Utah to the city of Salt Lake;

That the said corporation acquired a line of railway from San Pedro to Los Angeles, and was engaged in the construction of the balance of its line, when the said defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole purpose of restraining trade and commerce among the States and with foreign nations and monopolizing the same as hereinbefore more particularly set forth and of preventing competition between said railway so in the process of construction, and said Union Pacific Railroad system, including the said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same, put large gangs of men at work to interfere with and prevent construction of the said line, and threatened said Clark, his associates, and said San Pedro, Los Angeles & Salt Lake Railroad, that if said line was completed, the same would be paralleled by said Oregon Short Line, its value would be destroyed and its ability to secure business or operate at a profit would be taken away, which said threats, litigations, and other interference were continued for a

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period of many months, as the result of which the said defendant Clark, and his associates, were induced to desist from and abandon their proposed independent competing line, and said Harriman and his associates hereinbefore named and said Oregon Short Line Railroad Company on the one part, and the said Clark and his associates upon the other part, combined and confederated together to suppress such proposed competition; and to maintain, continue, and extend the restraint of trade and monopoly theretofore built up and attempted to be built up by said Harriman and his associates, as hereinbefore averred, said Clark joined in said conspiracy to suppress competition in all said territory as hereinbefore set forth, and pursuant to such alliance with said conspirators, the said Clark entered into a certain agreement with the defendant Harriman, under date of July 9, 1902, a true and correct copy of which is hereto annexed marked "Exhibit A" and made a part of this bill as fully as though set forth herein at length;

That pursuant to the said contract made between said defendants Clark and Harriman certain supplemental deeds, contracts, and agreements in writing were made between the defendant Oregon Short Line Railroad Company, the defendant Union Pacific Railroad Company, the defendant Southern Pacific Company, and said defendant San Pedro, Los Angeles & Salt Lake Railroad Company, in and by which contracts and agreements certain lines of railroad controlled by said Oregon Short Line Railroad Company in southern Utah and the eastern part of Nevada were conveyed to the San Pedro, Los Angeles & Salt Lake Railroad Company, and said Oregon Short Line Railroad Company desisted from its work of constructing a line of railway parallel with the said proposed line of the said San Pedro, Los Angeles & Salt Lake Railroad Company, and withdrew all opposition to the construction of the latter;

That said defendant Harriman secured to said San Pedro, Los Angeles & Salt Lake Railroad Company the use of certain of the tracks owned or controlled by said defendant Southern Pacific Company and said Atchison, Topeka & Santa Fe Railway Company in southern California, and the balance of the said line of the San Pedro, Los Angeles & Salt Lake Railroad Company between Los Angeles and the tracks of the Southern Pacific Company near Riverside, Cal., between the terminus of and the tracks of the Atchison, Topeka & Santa Fe Railway Company so leased to it near the Cajon Pass, in eastern California, and the terminus of the said line so acquired from the said Oregon Short Line Railroad Company in eastern Nevada were at once constructed by said San Pedro, Los Angeles & Salt Lake Railroad Company, which, by means of said tracks so constructed, leased, and acquired is now engaged in operating a through line from said San Pedro to Salt Lake;

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That as provided by said contract Exhibit A, and for the purpose of maintaining, extending, and preserving the restraint of trade and commerce among the States and with foreign nations, and monopolizing the same and destroying competition with relation thereto, pursuant to the conspiracy hereinbefore alleged, certain traffic arrangements and contracts were caused by said conspirators Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, William A. Clark, and their associates, to be made between said San Pedro, Los Angeles and Salt Lake Railroad Company, and said Southern Pacific Company, by which it was agreed that upon all local competitive business the said San Pedro, Los Angeles & Salt Lake Railroad Company should adopt the tariffs and schedules of said Southern Pacific Company, and that the same should not be at any time changed without the consent of both parties to said agreement during the period of ninety-nine years thereafter; and certain other contracts were made by which said Oregon Short Line Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company, respectively, bound themselves for a like period of ninety-nine years that they would not build or assist in building any lines of railway into the respective territories served by said companies; that is to say, that the San Pedro, Los Angeles & Salt Lake Railroad Company would not construct any lines of railway north of the parallel of Salt Lake City, Utah, and the Oregon Short Line Railway Company would not construct any lines south of the parallel of Salt Lake City, Utah, except by common consent; it was further agreed between said Union Pacific Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company that the said Union Pacific Railroad Company should have the right to make and establish through rates on all joint business between points reached over the lines of said Union Pacific Railroad Company and points in Utah on the said San Pedro, Los Angeles & Salt Lake Railroad Company; and in many and divers other ways the said San Pedro, Los Angeles & Salt Lake Railroad Company surrendered the control of said company and the management of its affairs to the said Harriman and his associates, including said Union Pacific Railroad Company and said Oregon Short Line Railroad Company.

That the said conspirators caused a total issue of $25,000,000 par value of stock of said San Pedro, Los Angeles & Salt Lake Railroad Company to be made, and the same was divided in equal parts between the said Clark, representing himself and his associates, and the said Harriman, representing said Oregon Short Line Railroad Company; and said stock was, with the exception of the shares necessary to qualify the directors of said San Pedro, Los Angeles & Salt Lake Railroad Company, placed in the names of said defend-

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ants Harriman and Clark, respectively, and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, under an agreement by which said trust company should hold and vote the same at all stockholders' meetings for a long term of years, in such manner as said company might be directed by said Clark and Harriman; a true and correct copy of which agreement is hereto attached, marked "Exhibit B," and made a part hereof, as fully as though herein set forth at length;

That each and all of the acts hereinbefore last described were done pursuant to said original conspiracy to suppress competition and procure a monopoly of the transportation business throughout the territory hereinbefore described, in which conspiracy the said Clark joined, and to which he united himself as above set forth;

That in pursuance of the said combination, confederation, and conspiracy the said lines of railroad so owned and operated by said San Pedro, Los Angeles & Salt Lake Railroad Company are in all respects managed, operated, and controlled by the said conspirators; and there is not, and can not be, while such control continues, any competition whatsoever between the said San Pedro, Los Angeles & Salt Lake Railroad Company and said Southern Pacific Company, or the other lines of railway owned or controlled by said Union Pacific Railroad Company and said Harriman and his associates, as hereinbefore alleged.

VII.

Complainant further avers that pursuant to the said conspiracy to restrain trade and commerce among the several States and with foreign nations, and to monopolize and attempt to monopolize such trade and commerce, and to unlawfully restrain and prevent competition among said railway systems, the said defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick did, in or about the early part of the year 1904, make large purchases of stock of the said Atchison, Topeka & Santa Fe Railway Company, aggregating, as complainant is informed and believes, at least $30,000,000 par value of said stock, and after making said purchases the said defendants Schiff, Harriman, and Frick demanded of the officials of the said Atchison, Topeka & Santa Fe Railway Company, who held the proxies of the holders of a majority of the stock of said company, that certain of said parties so engaged in said conspiracy should be chosen and elected as directors of said Atchison, Topeka & Santa Fe Railway Company; that pursuant to said demand, and by reason of the fact that under the cumulative system of voting which was provided for in the charter of said railway company, the holders of the amount of stock so controlled by said defendants Schiff, Harriman, Kahn, Stillman, Rogers, and Frick would have been able to elect

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two directors of said company, the said officials consented and agreed that said defendants Rogers and Frick, who had united themselves with the said conspiracy so originally made by said Harriman, Schiff, Kahn, and Stillman, and the various railway companies hereinbefore mentioned, might be elected as directors of said Atchison, Topeka & Santa Fe Railway Company, and during the said year 1904 the said defendants Frick and Rogers were so elected as directors of said Atchison, Topeka & Santa Fe Railway Company, and have since served and are still serving as such directors, and that by means thereof the said Union Pacific Railroad Company, of which said Rogers and Frick are, and during all of said times have been, directors, and in which they are largely interested, has had knowledge of the affairs and business of said Atchison, Topeka & Santa Fe Railway Company.

That in the summer of 1906, for the purpose of making more certain and effective the restraint of trade and elimination of competition and the monopolization of commerce hereinbefore referred to, the said Harriman and his coconspirators, including said Union Pacific Railroad Company, caused to be purchased by said Union Pacific Railroad Company $10,000,000 par value of the stock of said Atchison, Topeka & Santa Fe Railway Company, and said Union Pacific Railroad Company is still the owner and holder thereof, as complainant is informed and believes;

That pursuant to said partial control of said Atchison, Topeka & Santa Fe Railway Company so obtained by said Harriman and his associates, including said Union Pacific Railroad Company, competition between the system of railways so controlled by said Union Pacific Railroad Company and said Atchison, Topeka & Santa Fe Railway Company, has to a large extent been eliminated; that the said conspirators have caused the said Southern Pacific Company to abandon certain extensions, improvements, and additions to their said interstate railway in the State of California, and the said Atchison, Topeka & Santa Fe Railway Company has been in the same manner caused and induced to abandon extensions and additions to its said interstate railway lines in said State of California, and said extensions so projected and partially completed have been amalgamated, and the title to the said property placed in the name of a new corporation known as the "Northwestern Pacific Railway Company," the stock of which is owned in equal parts by said Southern Pacific Company and said Atchison, Topeka & Santa Fe Railway Company under a contract by which the control of said lines, additions, and extensions is to be in alternate years exercised by said two companies, respectively, but for the common benefit of said two corporations; and the lines of railway of said Union Pacific Railroad Company, said Southern Pacific Company, and said Atchison, Topeka & Santa Fe Railway Company are operated in harmony with each other

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under agreements and understandings as to rates and divisions of business.

That all of the said acts hereinbefore enumerated have been done pursuant to the said conspiracy so originally formed by certain of the defendants, as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time, as above alleged.

VIII.

In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge, and decree that the combination and conspiracy hereinbefore described is unlawful, and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" and that the defendants and each and every one of them and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any action in pursuance of, or for the purpose of carrying out the same; and in addition, that the several defendants be respectively enjoined as follows:

1. That the defendants, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, and their respective officers, directors, executive committees, and their respective agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company, the Great Northern Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, and the Southern Pacific Company;

2. That the defendant Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either

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of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

3. That the defendant Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies or any person or corporation in their interset or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

4. That the defendant Atchison, Topeka & Santa Fe Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

5. That the defendant Southern Pacific Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation

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Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

6. That the said San Pedro, Los Angeles & Salt Lake Railroad Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Oregon Short Line Railroad Company or said Harriman as the nominal holder of the stock in said San Pedro, Los Angeles & Salt Lake Railroad Company, issued for the benefit of said Oregon Short Line Railroad Company, or said Farmers' Loan & Trust Company as the depository of said one-half of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company, as the owner or holder of any shares of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company; and be further enjoined from permitting such parties, or any of them, or any person or corporation in their interest, to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to any of said parties, or their assigns, unless authorized by this court; and from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line Railroad Company or said Harriman or said Farmers' Loan & Trust Company unless authorized by this court.

7. That the defendant Farmers' Loan & Trust Company, its trustees, officers, agents, servants, and all persons acting under its authority, be perpetually enjoined from voting the said stock, or any stock of the said San Pedro, Los Angeles & Salt Lake Railroad Company held by it under the said agreement Exhibit B, at any meeting of the stockholders of said railroad corporation; and that said Farmers' Loan & Trust Company be perpetually enjoined from transferring or assigning the said stock, or any of the same, unless authorized by this court.

8. That said defendant W. A. Clark, his agents, servants, and all persons acting by, through, or under him, be perpetually enjoined from in any manner carrying out the said contract Exhibit B, and from voting, either personally or through any proxy or representative, any of the stock of said San Pedro, Los Angeles & Salt Lake

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Railroad Company for the purpose of carrying out the said unlawful combination in restraint of trade and commerce.

9. That the individual defendants named, and their associate stockholders, and each and every person combining or conspiring with them and their trustees, agents, and assigns, present or future, and each and every one of them, be perpetually enjoined from doing any and every act or thing in furtherance of the combination or conspiracy or tending to carry out the conspiracy described in this bill of complaint, or intended or tending to complete control or partial control of said competing lines of railway by the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or the Oregon Railroad & Navigation Company, or their officers, directors, and executive committees, or in the control, legal or practical, of any person or persons, association or corporations, acting for or in lieu of said Union Pacific Railroad Company, or the Oregon Short Line Railroad Company, or the Oregon Railroad & Navigation Company, in the carrying out of the unlawful combination or conspiracy hereinbefore alleged.

10. That each and all of the acts and doings of said defendants in pursuance of said conspiracy be decreed to be in violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," and the acts amendatory thereof, and that a writ of injunction, mandatory or otherwise, as may be necessary, issue out of this court enjoining the said defendants, and each and every one of them, and commanding the said defendants and each and every one of them, their officers, directors, servants, and agents to desist from the said unlawful acts, and that they and each of them, and all and each of their respective directors, officers, agents, servants, employees, and all persons acting under or through them or either of them, or in their behalf, or claiming so to act, be enjoined, restrained, and prohibited from entering into, taking part in, or performing any contract, combination, or conspiracy, the purpose or effect of which will be as to said trade and commerce among the several States and Territories and with foreign nations, to restrain trade or to monopolize and attempt to monopolize said trade and commerce in violation of the provisions of the said acts of Congress.

11. And the complainant, the United States of America, prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises; to the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles

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& Salt Lake Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, and their coconspirators whose names are unknown to the complainant, as such names may become known to complainant and the court be advised thereof, and to each of them, commanding them and each of them to appear herein and answer (but not under oath) the allegations contained in the foregoing petition and abide by and perform such order or decree as the court may make in the premises; and that pending the final hearing of this case a temporary restraining order and temporary writ of injunction may issue enjoining the defendants and their associates, and each of them, and their stockholders, directors, officers, agents, and servants, as hereinbefore prayed.

HIRAM E. BOOTH,
Attorney for the United States
for the District of Utah.

CHARLES J. BONAPARTE,
Attorney-General of the United States.
MILTON D. PURDY,
Assistant to the Attorney-General.
FRANK B. KELLOGG,
C. A. SEVERANCE,
Special Assistants to the Attorney-General
of the United States.

EXHIBIT A.

Clark-Harriman Agreement, July 9, 1902.

THIS AGREEMENT made and entered into this ninth day of July, 1902, by and between William A. Clark, hereinafter designated as Clark, trustee, for his own account and upon account of his associates, who are, with himself, owners of approximately seventy per cent of the capital stock of the California Improvement Company hereinafter called the California Company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire Company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro Company, and Los Angeles Terminal Land Company and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line Company, or such company or companies as he may declare parties to said trust, party of the second part, WITNESSETH:

WHEREAS said California Company is a corporation existing under the laws of the State of Illinois having an issued capital stock of $2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of $300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of $3,000,000, all of which capital stock if said two last named companies is now in the treasury of said California Company; and the said California Company also owns 25,000 shares of the capital stock of the San Pedro Company in the aggregate amount of $2,500,000 par value, which stock of said San Pedro Company is now issued to and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California Company, as their interests may appear; said capital stock of all said companies being divided into shares of $100 each; and also owns and claims the right to receive and obtain from said San Pedro Company, to be delivered to W. A. Clark and R. C. Kerens, as trustees for its stockholders as their interests may appear, $2,500,000 par value, of the first mortgage bonds

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of said San Pedro Company when the same shall be hereafter issued; and

WHEREAS all of the railroad, franchises, rights of way, terminal facilities, and railroad property, and all other property, real, personal, and mixed, acquired by the Los Angeles Terminal Railway Company, has been by said company sold and conveyed to the San Pedro Company; and

WHEREAS the Empire Construction Company is a corporation of the State of Utah organized for the purpose of providing for the financing, construction and equipment of the railroad of said San Pedro Company, with a capital stock of $1,000,000, divided into shares of $100 each, par value, all of which capital stock has been subscribed for and has been fully paid up and issued; and

WHEREAS said William A. Clark, for himself and his said associates in whose behalf he now owns or directly controls approximately seventy per cent of the capital stock of the California Company, the Empire Construction Company, and the San Pedro Company, and the remainder of said capital stock, being approximately thirty per cent of said capital stock of said companies, is owned, held or controlled by others not directly represented by said Clark; and

WHEREAS the assets of said Empire Company consist of its claims against, and contracts with, the said San Pedro Company for money advanced, work done, and material furnished on account of the improvement and acquirement of railroad property for said San Pedro Company; and

WHEREAS the San Pedro Company is the owner of the railroad, equipment, rolling stock, terminal properties, station grounds, and all real, personal, and mixed property formerly owned by the Los Angeles Terminal Railway Company, and also owns certain other railroads, railroad properties, franchises, rights of way, road beds, stations, station grounds, water stations, equipment, rolling stock, tools, machines, machinery, supplies, and other property procured for and intended to be used as a part of the railroad property of the said San Pedro Company, and situated in the States of California, Utah, and Nevada, all of which property is free and clear of any debts, incumbrance or charges except the indebtedness to the said Empire Company, and its promise to execute and deliver, when issued, its said first mortgage bonds in the aggregate par amount of $2,500,000 to William A. Clark and R. C. Kerens, trustees for said stockholders of said California Company, as aforesaid; and

WHEREAS the said Los Angeles Terminal Land Company is the owner of certain real estate situated in Los Angeles County, California, including a tract of real estate situated on or near the harbor of San Pedro in said county and State, all of which property of said Los

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Angeles Terminal Land Company is free and clear of all incumbrances, liens, and claims of every kind; and

Whereas said Short Line Company is the owner of and controls and operates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the western boundary of said State, thence across the State of Idaho and to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the State of Utah, and thence north across the State of Idaho to a terminus at Silver Bow, Butte, and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with a branch line extending from Lehi Junction into the Tintic mining district and the branch lines connecting therewith, and also a branch line known as the terminus line, together with various controlled, owned, and auxiliary lines of railroad in the above named States and the States of Nevada and California.

The Short Line Company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas the said railroads of the Short Line Company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming, Colorado, and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence easterly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas, and Nebraska; and said lines of railroad of the Short Line Company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada, and into California and beyond; and

Whereas the San Pedro Company and the Short Line Company and its auxiliary companies under their respective charters each have power to construct a line of railroad between Salt Lake City and San Pedro Harbor in southern California, via Los Angeles; and

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WHEREAS the parties hereto desire to provide for the establishment, construction, ownership, and operation of a line and system of railroad between said terminii by using therefor a part of the lines of railroad now owned or controlled by the Short Line Company, and all the railroads and properties of the San Pedro Company now owned by it or owned in its interest or for its use, and by connecting said several lines either by the construction of a new line or by securing leasehold or trackage rights over other lines of railroad to so connect said lines, and by means thereof to make one connected through line of railroad between said terminii, to the end that the same may constitute a new through transportation line for the use of the business of said San Pedro Company and said Short Line Company and their connections, and for the carriage of business which may originate on or be destined to points on or beyond their respective lines, or which may be delivered to them, or either of them, by connecting railroads, and for the carriage of business between stations on their respective lines and between all points on or beyond their respective lines, as well as to all points on or beyond the lines of railroad owned or operated by the connections of said Short Line Company or said San Pedro Company, as aforesaid, upon through tariffs to be jointly made and lawfully published, and upon just and fair divisions of through rates and charges upon interchanged business:

NOW, THEREFORE, for the purposes aforesaid and to accomplish the same the parties hereto have covenanted and do hereby mutually covenant and agree to and with each other as follows:

ARTICLE FIRST.

SECTION 1. The said William A. Clark, for himself and as trustee for his said associates, in consideration of the premises and of the undertakings of said Edward H. Harriman, as trustee as aforesaid, hereby covenants and agrees to and with the said Edward H. Harriman, as trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and within six months after the date hereof cause to be assigned and delivered to said Harriman as such trustee, or otherwise as provided by section 4 of this article, an equal undivided half interest in approximately seventy per cent. of the capital stock of each of the companies below named, that is to say:

(*a*) An undivided half interest in said approximately seventy per cent of the capital stock of the California Improvement Company held by said Clark and his associates as aforesaid, and through the medium of said stock an undivided half interest in said approximately seventy per cent of $2,500,000 par value of the first mortgage bonds of the said San Pedro Company by it agreed to be issued and

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delivered to said William A. Clark and R. C. Kerens, trustees as aforesaid.

(*b*) An equal undivided half interest in said approximately seventy per cent of the outstanding capital stock of said San Pedro company owned by said Clark and his associates but held in the names of Clark and Kerens, trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(*c*) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Empire Construction Company.

(*d*) An undivided half interest in said approximately seventy per cent of the capital stock of the Los Angeles Terminal Railway Company.

(*e*) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

SECTION 2. In consideration of the foregoing the said Harriman as trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent of said outstanding capital stock of each said California company and said Empire company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent interest thereon from the time he acquired the same, less any amounts which the said Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments, or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman, as trustee, from the associates of said Clark, the prices and conditions of sale shall be the same as above provided for the purchase of the said Clark's individual stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as trustee, further covenants and agrees that he will join with said Clark, trustee, in the purchase at

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prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent of said stocks, and that the same when so purchased for joint account of said Clark and himself as such trustees shall be transferred and assigned to and held jointly in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as trustee as aforesaid, as such trustees, shall own each an equal undivided half of all of the capital stocks of all of the above-named companies.

SECTION 4. It is hereby agreed that all of said capital stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, trustee, under the provision of said sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, trustee for himself and his associates, and Edward H. Harriman, as trustee," and that all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, trustees, together with all of the stock of the San Pedro Company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as trustee for himself and his associates, and Edward H. Harriman, as trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California Company, or said Empire Company, or of said San Pedro Company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro Company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any time without giving said other party hereto the right to purchase such holdings, or interest therein, so offered for sale, on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be, at the request of either party hereto, divided between said Harriman and Clark as trustees according to their respective interests; provided, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, as trustee," all

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of the said several shares of stock and certificates representing the same referred to in this section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in trust for the parties hereto, in accordance with and subject to the terms of an agreement to be executed between the parties hereto and the said trust company concerning the holding of said shares.

The said last named agreement shall, among other things, provide, first, that said trust company shall issue to the parties hereto certificates of interest running to the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, trustee," jointly, each party hereto to have possession of certificates representing one-half in number of the shares and one-half in par value thereof, which may be deposited with the said trustee; and, second, that said trust company will, from time to time, when jointly requested by the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, trustee," give and issue to such person or persons as said parties hereto may direct a proxy or proxies authorizing the person or persons named in said proxy or proxies to vote any and all of said stock at any meeting of the stockholders of said several companies; and, third, that said trust company shall pay over to the parties hereto, or such persons as they shall jointly direct, any and all dividends, whether of stocks, bonds, moneys, or property of any sort belonging to any of said several corporations, and which may be paid to or received by said trust company in any manner by reason of its holdings of any of said capital stock as aforesaid, together with such other provisions as may be hereafter agreed upon touching instructions which may, from time to time, be given to said trustees jointly by the parties hereto, said certificates of interest above named to be held and possessed by the parties hereto, but neither party shall in any manner dispose of said certificates of interest, or any part thereof, or of any interest therein, before the full period of ten years after the opening for business of said through line of said San Pedro Company, as in this agreement provided, without first obtaining the consent of the other party hereto to such transfer, nor at any time without giving such other party hereto the right to purchase such holdings or certificates offered for sale on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years said certificates of interest may be surrendered by the parties hereto, or by the holders thereof to said trust company, which shall thereupon assign and deliver the said stock certificates so held by it to the said holders of said certificates of interest, in number and par value of shares named in such surrendered certificates of interest, and said shares of stock may then be transferred upon the corporate books of said several

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companies accordingly. At any time thereafter said certificates of stock issued jointly to said "Clark, trustee, and Harriman, trustee," may upon demand of either party hereto be divided between them according to their respective interest, yet subject, however, to the right of either party hereto to purchase said stock from the other party hereto at the price and on the terms in this section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the carrying out of this agreement no further stock of the California Company or of the San Pedro Company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the said one undivided one-half of the capital stock of said companies, now owned by said Clark, trustee, will whenever requested by said Harriman, trustee, cause one-half of the membership of the directorate of each of the several companies to be vacated, and will cause directors to be nominated and named by the said Harriman, trustee, to be elected to the directorate to fill such vacancies in each and every of said several companies, but said Harriman, trustee, appreciating the advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end disturbing as little as may be the present organization of said company until the through line of said San Pedro Company in this agreement mentioned is completed and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Construction Company and the San Pedro Company not having been definitely agreed to, it is mutually covenanted and agreed between the parties hereto that within six months from the date hereof a contract shall be entered into between the said Empire company and the said San Pedro company which shall be in terms satisfactory to the parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining to the construction, opening for business, and operation of the railroad of the San Pedro Company, including the purchase of equipment, the making of contracts for construction, and the purchase of material therefor, and any and all contracts establishing relations of trackage or traffic with other railway companies, the parties shall act jointly, and no such contracts or arrangements, or any of them, shall be made, or any corporate action taken by said San Pedro Company, the California Company, or the Empire Company without the approval of both parties hereto, and that in all such matters each of the parties hereto may be represented by an agent or agents to be appointed by them respectively with power to act for and in the names

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of their respective principals, and the said parties shall also act jointly in naming and prescribing the accounting and other officers and agents to be engaged in the operation of said companies, and each of them, and the auditor of said Empire Company shall be a person selected by the said Harriman, trustee, and upon the request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights, and franchises of each of said several companies.

ARTICLE SECOND.

SECTION 1. In consideration of the covenants of the said Clark, trustee, for himself and his associates, and also on behalf of the San Pedro Company, in this agreement written, the said Harriman, trustee, as aforesaid, covenants and agrees with said Clark, as trustee, that he will in the time hereinafter stated, negotiate with said Short Line Company, and obtain from said Short Line Company the sale and lease to said San Pedro Company of the property hereinafter mentioned, as follows:

(PARCEL 1.) A conveyance from said Short Line Company to said San Pedro Company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus Branch of the Short Line Railroad from a point or points beginning at the connection of said branch with the yards of the Short Line Company to be agreed upon when said yards are defined as hereinafter provided, in Salt Lake City, county of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus in the county of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys and maps thereof, and railroad property, other than equipment, acquired by the Short Line Company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro Company as hereinafter provided.

(PARCEL 2.) A conveyance from said Short Line Company to said San Pedro Company by a good and sufficient deed containing a covenant to save and protect that said San Pedro Company harmless from

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the lien or charge of the consolidated mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from the liens of the income A and income B mortgages of said company, for all and singular the following described property: All the line of railroad extending from a point near Sandy and about ten miles south of Salt Lake City, Utah, to be hereafter definitely fixed by a description and agreement between the parties hereto, and running from said point southerly through Provo, Juab, and Leamington to Milford, Utah, and thence a further distance of about 17 miles to a terminus of said line of railroad at Frisco, Utah, and also all those certain other branch lines of railroad owned by said Short Line Company which extend into what is known as the Tintic district, and which are generally described as follows: A line extending from Lehi Junction to the Tintic district, together with all branches and interest in joint tracks connecting therewith.

(Parcel 3.) A lease from the said Short Line Company for the term of ninety-nine years, granting to said San Pedro Company the general and common use for its sole and separate business, in common with the Short Line Company, of that part of the main line or lines of the said Short Line Company's railroad extending from the northerly yard limit point thereon southerly through the city of Salt Lake for a distance of about ten miles south from the southern limits of said Salt Lake City to a point on said main line to be hereafter definitely fixed, but which is to be so fixed as to admit the Short Line Company and the San Pedro Company to the unobstructed use of the side tracks and switches necessary or convenient for use of and access to the side tracks, switches, and properties of either of said companies, or to any or all of the smelters or other industrial institutions now existing or that may be hereafter established upon or near to said main tracks, together with all side tracks, stubs, spurs, switches, crossovers, standing places for cars, stations, signals, buildings, coal chutes, shops, roundhouses, turntables, and every other facility or property used in connection with or appurtenant to the property or business of the Short Line Company between said northerly yard limit and said point near Sandy about ten miles south of the southerly boundary of said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line Company to the San Pedro Company, providing for the said use of the properties of the said Short Line Company from the north yard limit in Salt Lake City to the said point near Sandy, including the terminal facilities of the Short Line Company in Salt Lake City, Utah, shall be upon the consideration that the San Pedro Company shall pay, in monthly instalments a rental based upon a four per cent interest charge upon an agreed valuation of said property, and the cost of any capital additions thereto hereafter made, apportioned

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between said Short Line Company and said San Pedro Company upon the basis of use, but with a fixed minimum proportion to be paid by said San Pedro Company, and also a proportionate amount of the expense of maintenance, improvement, and operation of said property, including taxes, special assessments, and insurance, the amounts of which rental and other payments, and the rules for ascertaining the same, together with rules for governing extensions and betterments, and the cost, rental, and use thereof, and rules governing the operation of said yard, shall be agreed to by the operating officials of said Short Line Company and said San Pedro Company, subject to the approval of the parties hereto, and which shall then be incorporated in said contract of lease, together with all formal provisions usual to such contracts.

The said property, the use of which for its own separate business is let to the San Pedro Company, shall be managed and controlled by the Short Line Company, provided, however, that for cause upon demand of the San Pedro Company, after thirty days' written notice, to be given to the general manager of the Short Line Company by the San Pedro Company, a competent superintendent for the same shall be jointly chosen by the respective presidents of the San Pedro Company and the Short Line Company, who shall be charged with the care, management, and operation of said property, to the end that the rights and privileges of the said parties thereto under this agreement shall be fully secured and preserved. Said superintendent shall be removed or discharged upon reasonable notice upon the written demand of either party to said lease given to the other party.

(PARCEL 4.) The Short Line Company is the owner of all of the capital stock and first mortgage bonds of the Utah & Pacific Railway Company, which owns a line of railroad extending from Milford, Utah, to the Nevada-Utah state line at a point known as Uvada, and said Short Line Company owns all of the capital stock of the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, which owns a railroad extending from the Utah-Nevada state line, at the point aforesaid, southerly to Calientes in Lincoln County, Nevada, and a right of way and partially constructed road bed for a line of railroad extending from said Calientes to a point near Pioche in said Lincoln County, and also a right of way and partially constructed road bed for a line of road extending from said Calientes southwesterly across the State of Nevada to the Nevada-California state line; and said Short Line Company also owns all of the capital stock of the Utah, Nevada & California Railroad Company in California, a corporation of the State of California, which claims or owns a right of way extending from the Nevada-California state line to a point on the railroad of the Santa Fe Company near Ludlow, Cal., and other railroad properties; said Short Line Com-

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pany also owns all of the capital stock of the New East Tintic Railway Company, which last named company owns a line of railroad in the Tintic district.

The said Harriman, trustee, undertakes and agrees to procure from the Short Line Company an agreement to sell to the San Pedro Company, upon payment of prices to be fixed as hereinafter provided, all of the capital stock and first mortgage bonds of each of the following named companies: The said Utah & Pacific Railway Company; the said Utah, Nevada & California Railroad Company; the said Utah, Nevada & California Railroad Company in California; and the said New East Tintic Railway Company; and an agreement from the Short Line Company that it will, upon the request of the San Pedro Company, if necessary, act with the said San Pedro Company in procuring from each of the said several companies lastly above named a cancellation of the first mortgage bonds and the release and satisfaction of the said first mortgages, and also in procuring conveyances to said San Pedro Company from each of said four companies above named, of all the railroad, franchises, and other property owned by said companies, respectively, so as to vest the said San Pedro Company with the full title to and ownership in all of said railroads, franchises, and other property in this paragraph mentioned.

(PARCEL 5.) The said Harriman, trustee, as aforesaid, undertakes and agrees that said Short Line Company will sell and convey to the San Pedro Company such a proportion of its equipment appropriate and proper for use upon and heretofore assigned to use upon its lines of railroad south of Salt Lake City, above referred to, as may determine between the chief operating officers of said companies, upon being paid therefor, the value of said equipment as the same shall be found and determined by the joint action of the superintendent of motive power of the parties hereto, and said Clark, as trustee, undertakes that said San Pedro Company will buy said equipment and pay for the same on the delivery thereof at the price so found and determined.

SECTION 2. The said Clark, trustee as aforesaid, in consideration of the covenants and agreements of the said Harriman, as trustee as aforesaid, as written in this article, hereby undertakes and agrees that he will negotiate with and obtain from said San Pedro Company a covenant and agreement on its part that it will buy from the said Short Line Company and pay for all of the properties referred to and described in this article as parcels 1, 2, 4, 5, and that the value of the said railroads and properties to be conveyed by the Short Line Company described in said parcels shall be ascertained and determined, except as to said equipment, in the following manner: By a fair estimate of the value thereof, to be agreed upon by the parties hereto,

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based upon the cost, which is to be the minimum factor, and upon the earning power of the said railroads, franchises, and properties, capitalized at four per cent per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro Company to the Short Line Company upon making the conveyance, transfers, and assignments as aforesaid.

Said agreement shall provide that said San Pedro Company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, relocation, construction, and reconstruction upon the premises described in parcel 1 hereof, and will carry out, fulfill, and perform all of the said Short Line Company's obligations in respect to said work, and will use the said new work when completed as part of the San Pedro Company's main line of railroad, and that said San Pedro Company will accept said lease for the property described in parcel 3 on the terms above written.

All said conveyances, assignments, and transfers and said lease to be made and delivered, and considerations therefor paid contemporaneously with the exchange of stock and the execution of the agreement hereinafter mentioned are to be accomplished within six months from the date hereof.

ARTICLE THIRD.

SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the Southern Pacific Company from the point of its junction with the tracks of the Southern California Company at or near Colton to the point of junction with the tracks of the San Pedro Company at or near Riverside, at a rental that will not exceed four per cent per annum on one-half the valuation of the property of the Southern Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 2. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, at a rental not exceeding four per cent per annum on one-half the valuation of the property of the Southern California Com-

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pany so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 3. Said Harriman, as trustee, further covenants and agrees that he will negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the said Santa Fe Pacific Company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro Company, at a rental which shall not exceed four per cent per annum on one-half the valuation of the property of the said Santa Fe Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro Company to pay to each of said lessors for water, fuel, and other supplies, labor or material furnished to and for the sole use of the San Pedro Company while upon the tracks of said several companies, and also the usual conditions and agreements for payment by the San Pedro Company to said several lessors for losses and damages to persons or property arising from the negligence or wrongdoing of its sole employees.

ARTICLE FOURTH.

The parties hereto, as trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro Company and the said Short Line Company shall and will, on or before the date named in section 2 of article second hereof, enter into an agreement and agreement for a term of ninety-nine years with each other concerning the new line of transportation and traffic substantially to the effect following:

(*a*) The said new transportation line shall consist of the line of railroad to be created, secured, constructed, and operated under the charter and franchises of the San Pedro Company. Its main line shall commence at the city of Salt Lake, Utah, and run southerly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific Company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Company, the Southern California Company, and the Southern Pacific Company to a connection with the San Pedro Company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.

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(*b*) But if for any reason any of said trackage arrangements referred to in Article Fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro company in lieu thereof, making and constituting a through line of railroad from the City of Salt Lake to San Pedro Harbor via Los Angeles in California.

(*c*) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line company and described in Parcel 2 above mentioned and the branch lines of the San Pedro Company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro Company, it being understood that the San Pedro Company shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(*d*) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro Company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof; providing, however, that if either party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line Company shall not build branch lines which will invade the territory of the San Pedro Company south of Salt Lake City or divert business which would be naturally tributary to the San Pedro Company's road south of Salt Lake City.

SECTION 2. The San Pedro Company will, in said contract, agree to construct the railroad from a junction on the line of the Santa Fe Pacific Company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line Company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed or to be constructed by the San Pedro Company, and which is to become a portion of the main line thereof, shall be constructed with not less than seventy-five pound rail, and shall be completed and equipped as first class in every respect, the construction and equipment to be of a standard equal at

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least to that already adopted by the San Pedro Company upon that portion of its road heretofore constructed in southern California.

SECTION 3. The Short Line Company will in said contract undertake for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific company, to join with the San Pedro Company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro Company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and rates, and the maintenance thereof, and the publication thereof as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

"It is agreed that the interchange of traffic by and between the San Pedro road on the one hand, and the Short Line Company and the Union Pacific Company on the other hand, as against any competitor of said Short Line Company or said Union Pacific Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific Company; and, in like manner, that the interchange of traffic by and between said Short Line Company and said Union Pacific Company on the other hand, and the San Pedro Company, on the other hand, as against any competitor of the said San Pedro Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro Company:

"That is to say,

"Whereas, the value of the Short Line Company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro Company is hereinbefore provided, consists largely of their relation as feeders of said Short Line Company and said Union Pacific Company, and, whereas, it is not practicable to capitalize the value to said Short Line and said Union Pacific Company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line Company and said Union Pacific Company for the loss which would result from the diversion to other carriers of the traffic moving to and from points on said lines in Utah south of Salt Lake City.

"Now therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro

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Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific Company, and their respective connections, shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific Company. In consideration whereof said Short Line and said Union Pacific Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro Company, exclusively in connection with said San Pedro Company against any and all said San Pedro Company's competitors.

"Whereas, the owners of said Short Line and said Union Pacific Company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a railroad already constructed which would give entrance to Los Angeles and other points in southern California; and, whereas, the value to said Short Line and said Union Pacific Company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line and said Union Pacific Company, or by persons or companies friendly to said Short Line and said Union Pacific Company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line and said Union Pacific Company, or by companies friendly to them; and, whereas, by the sale of, or by the transfer by lease or purchase, to the said San Pedro Company, of the lines of said Short Line Company south of Salt Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of the line proposed to be built by the San Pedro Company, the said Short Line and said Union Pacific Company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California, which might be lawfully conducted in the interest of said Short Line and said Union Pacific Company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro Company of the ownership or control of the lines of the Short Line Company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between

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Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro Company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California and the roads of the Short Line and Union Pacific Company so as to form a through line of transportation service between points in California on the said San Pedro Company's roads and points east of Ogden, Utah, on or to be reached by way of the Union Pacific Company's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be done and profitably that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in this subdivision which shall be offered for transportation by other connecting carriers nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or which shall have the effect of giving said connection an advantage or preference over said

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through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

"No arrangement, contract, covenant or agreement for shipment or carriage of persons or property shall be made, permitted or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates, or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line Company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line Company is bound for itself, and undertakes to secure a like obligation upon the part of the Union Pacific Company and the roads of said Southern Pacific Company to deal with said San Pedro Company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively, deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro Company."

SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line Company and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines, and points on the line of said San Pedro Company in Utah, for business which said Short Line Company or said Union Pacific Company might give to or receive from said San Pedro Company, in competition with any and all other connections of said San Pedro Company; provided, however, that on demand said Short Line Company and said Union Pacific Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing through line for such business."

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SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with, or make any convention with a competitor of the other party hereto in any respect designed to, or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

SECTION 12. Said agreement shall also contain the following provision:

Said San Pedro Company hereby covenants and agrees that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City, or in Nevada, upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line company hereby further undertakes and agrees to negotiate with, and secure, if possible, from said Southern Pacific Company, an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

"The San Pedro Company covenants and agrees that it will make a covenant or agreement with the Southern Pacific Company for its (said San Pedro Company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs, and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro Company which is or may be subject to competition between said Southern Pacific Company and said San Pedro

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Company, and that thereafter neither party shall change said rates without the consent of the other party, unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific Company to its terminus at Council Bluffs, Iowa, and thence *via* its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger service shall be so established and put in operation whenever either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefor shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design, and in all respects the equal or superior of that of competing lines. Each party shall furnish its just quota in proportion to length of haul, of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided *pro rata* per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery and dispatch the same regularly without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own line, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business."

SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation Company,

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pro rata per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis: *Provided*, that neither party shall be required to perform any service other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers, shall be divided *pro rata* per rate, that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed cannot be located or arises from concealed or unknown causes the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and between the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties, each party shall receive its local rate.

"2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition, or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement, or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party

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complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If the two presidents within thirty days after receiving such complaint are unable to settle such differences so submitted, then the same shall, within thirty days thereafter, be referred to a committee of the two boards of directors to be created as provided in this article. Notice of the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee, when reduced to writing and signed by them or a majority of them, shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

ARTICLE FIFTH.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agreement by the party of the second part is subject to ratification and approval by the executive committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,
In Trust for Himself and His Associates.
EDWARD H. HARRIMAN,
As Trustee, as in Above Instrument Recited.

EXHIBIT B.

WILLIAM A. CLARK, individually and as a trustee,
EDWARD H. HARRIMAN, as trustee, and
THE FARMERS' LOAN AND TRUST COMPANY.

Stock Trust Agreement.

THIS AGREEMENT, made and entered into this 7th day of June, A. D. 1903, by and between William A. Clark, of the city of Butte, in the State of Montana, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, of Arden, New York, as trustee, as party of the second part, and The Farmers' Loan and Trust Company, a corporation created under the laws of the State of New York, hereinafter called the trustee, as party of the third part, WITNESSETH:

ARTICLE I.

SECTION 1. The parties of the first and second parts, in consideration of the sum of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the acceptance by the trustee of the trust hereby created, do jointly and severally sell, assign, deliver, and set over unto said trustee under the terms of this instrument, and to the successor in trust, if any, of said trustee, all and singular the following certificates of capital stock and the stock interest therein or thereby represented, viz:

1. 25,990 shares of the capital stock of the California Improvement Company;

2. 10,000 shares of the capital stock of the Empire Construction Company;

3. 3,000 shares of the capital stock of the Los Angeles Terminal Land Company;

4. 250,000 shares of the capital stock of the San Pedro, Los Angeles and Salt Lake Railroad Company (including those held by the directors of said railroad company), subject to the pledge and deposit of all the foregoing shares with Kuhn, Loeb & Co., duly assigned in blank, as part of the collateral for a loan of $25,000,000 made by said Kuhn, Loeb & Co. to said railroad company, and in order to secure

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the transfer of which hereunder the said parties of the first and second parts have executed an order to said Kuhn, Loeb & Co. as follows:

NEW YORK, ——— ———, 1903.

To Messrs. KUHN, LOEB & CO.:

There have heretofore been deposited and pledged with you under the terms of a certain agreement dated June 3, 1903, between yourselves and the San Pedro, Los Angeles and Salt Lake Railroad Company, as part of the collateral security for the loan therein provided for, two hundred and fifty thousand shares of the capital stock of the said San Pedro, Los Angeles and Salt Lake Railroad Company; all except directors' shares being owned by William A. Clark and Edward H. Harriman.

This is to authorize and direct you, upon the payment of the loan described in said agreement with the interest thereon, and upon the satisfaction of the obligations therein contained, to deliver all of the said shares of stock to The Farmers' Loan and Trust Company, of the city of New York, to be held by said trust company under the terms of a certain stock trust agreement dated June 7, 1903.

If hereafter you decline to make the additional loan described in said first mentioned agreement, and are called upon to surrender the two-sevenths in par amount of said shares of stock as provided in said agreement, this directs you to deliver the stock so to be surrendered to or upon the joint order of William A. Clark and Edward H. Harriman, their executors and administrators.

San Pedro, Los Angeles and Salt Lake Railroad Company, by ——— ———, president, and ——— ———, secretary.

WILLIAM A. CLARK.
EDWARD H. HARRIMAN.

Notice of above direction accepted:
KUHN, LOEB & CO.

So soon as the said shares of stock so transferred hereunder shall be received by the trustee, the same shall at once be transferred upon the books of said respective corporations into the name of the trustee, and all of the terms and conditions of this instrument shall at once attach thereto and all property in the said stock shall be deemed vested in the trustee as fully and to the same extent, and with the same force and effect, as if actual transfer and delivery of said shares of stock had been, at the time of the execution of this instrument, duly made to the trustee hereunder.

In case Kuhn, Loeb & Co. shall hereafter decline to make the additional loan of $10,000,000 provided for in their agreement with said San Pedro Company, dated June 3, 1903, and shall surrender to the parties of the first and second parts two-sevenths in par amount of the capital stock of the San Pedro Company, the said parties of the first and second parts hereby covenant with each other that they use the same or so much thereof as may be necessary as part of the collateral security to be given to some other lender who shall make a loan of not exceeding $10,000,000 to said San Pedro Company, and

that, upon making said loan by said other lender, the parties of the first and second parts will execute and deliver to said lender an order for the delivery of said shares of stock by said lender to the trustee, in like form as said order hereinbefore set forth, requiring said lender, upon the payment or other satisfaction of the loan and lien under which said shares may be pledged to him, to deliver said stock to said trustee for said account of said parties of the first and second parts as such trustees; and that in all other respects any shares of stock so surrendered to them by said Kuhn, Loeb & Co. shall be deemed sold, transferred, and delivered to the trustee, and shall be subject to and bound by all of the terms of this agreement.

SECTION 2. The parties of the first and second parts further covenant and agree to and with each other, and to and with the trustee, that from time to time, and when, individually or as trustee, they shall or may hereafter jointly secure by purchase or otherwise any additional shares of the capital stock of either or any of said several companies named in section 1 of this article, whether such stock be now issued or hereafter may be issued, they will immediately sell, assign, deliver, and set over to the trustee any and all such shares of stock, subject to all the terms and trusts of this agreement.

SECTION 3. The parties of the first and second parts further severally covenant and agree to and with each other, and to and with the trustee, that in case either of the parties of the first or second parts or their respective *cestuis que trust* shall hereafter secure, by purchase or otherwise, any further or additional shares of capital stock of any of the said companies mentioned in section 1 hereof, and not theretofore deposited with the trustee, whether such capital stock be now issued or at any time hereafter be issued by any of said companies, such acquisition, however made, shall be for and upon their joint account, at joint cost, and for the equal benefit and ownership of the parties of the first and second parts and their respective *cestui que trust*, and that the same shall be, whether it be stock now issued or stock which may be at any time hereafter issued by any of the said companies, if and when the cost thereof shall be borne or paid jointly by the parties of the first and second parts hereto, in like manner immediately assigned, transferred, and delivered to the trustee, and shall be and become subject to the terms hereof. But if the other of said first party or said second party shall not, on demand of the party who made such acquisition, or for whom such acquisition was made, pay one-half of the cost thereof to the party acquiring the same, then such party who has acquired the same, may, but not otherwise, hold and own such additional shares as his own, and free from the terms of this agreement, and free from any claim of interest therein by any other party hereto.

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SECTION 4. The parties of the first and second parts further covenant to and with each other, and to and with the trustee, that in case they or either of them shall in any manner or at any time hereafter secure or acquire any of said additional shares of said capital stock in any of said companies, which is now issued or may hereafter be issued by any of said companies, he or they will immediately inform and advise each of the other parties hereto of the time, manner, terms, and price at which such stock was secured or acquired, with an offer to subject the same to the terms of this agreement, and also that they will at once cause the trustee to be fully informed of any increase in capital stock of any of said companies which may at any time hereafter be authorized or made, and of the terms and conditions upon which the same is provided to be issued or is issued.

SECTION 5. The trustee shall have and hold all of the said shares of said capital stock of each of the companies mentioned in section 1 of this article, and the certificates representing the same, and which are, on the execution hereof, delivered to said trustee, as well also as any and all such shares of capital stock mentioned in sections 2 and 3 of this article, which may hereafter be delivered to the trustee, its successors or assigns, upon the trusts hereinafter specified, from and after the execution hereof and for the term of ten years from the day when the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company, or its successor, shall be opened for business from Salt Lake City, Utah, to San Pedro, California.

ARTICLE II.

DIRECTORS' QUALIFYING SHARES.

Enough shares of capital stock in each of the said companies mentioned in Article I hereof, to qualify the directorate in each of them, shall be reserved from the disposition of said shares of capital stock hereinafter provided, and the same shall be assigned and transferred by the trustee to the names of the persons selected to be or who shall be from time to time elected to such directorate. Such directors' qualifying certificates of shares, however, shall be at once assigned in blank by said directors and be delivered to and held in the custody of the trustee, to be used for said purpose, but subject to the terms of this instrument.

ARTICLE III.

The trustee, its successors and assigns, shall cause all of the said shares of capital stock (except those necessary to qualify the directors as aforesaid), and all the certificates thereof mentioned in Article I hereof, as well as all other shares of capital stock which may at any

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time hereafter be delivered to the trustee under this instrument, to be immediately and from time to time transferred to it as trustee, upon the respective transfer books of the said several companies, and thereafter the trustee shall be possessed of and hold all of the said stock and certificates as trustee under this instrument, with full power to hold the same as the owner of the legal title thereto, but subject as between the parties to this instrument and their assigns, to all the trusts in this instrument declared.

ARTICLE IV.

SECTION 1. The trustee shall issue "Certificates of interest" against all of said shares of capital stock and the certificates of capital stock which may now be, or which may hereafter be at any time, issued by any of said several companies, and by or for the parties of the first and second parts deposited with, and assigned to the trustee, to be and to become subject to the terms of this instrument, which said certificates of interest shall be issued by it to and in the names of "William A. Clark, trustee, and Edward H. Harriman, trustee," duly certified and issued under the hand of its proper officers, and entered upon correct books of record which shall be kept by the trustee, showing the details of the issuance and transfers of such certificates, in the usual manner and form of well organized corporations dealing with such matters.

SECTION 2. Said certificates may be in substantially the following form:

THE FARMERS LOAN AND TRUST COMPANY,

CERTIFICATE OF INTEREST

in

(Insert name of proper company.)

No. ———. ——— shares.

This certificate of interest is issued to ——— ——— pursuant to the provisions of a certain stock trust agreement dated June 7, 1903, made by and between William A. Clark, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, as trustee, as party of the second part, and the undersigned, as party of the third part, and reference to said agreement, an original of which has been lodged with the undersigned, is hereby made.

This certificate of interest is based upon ——— ——— shares of the capital stock of the ——— ——— of the par value of one hundred dollars each, which have been sold, assigned, delivered, and transferred to the undersigned as trustee under said agreement.

This certificate is not negotiable and not transferable, except upon the written consent of William A. Clark, trustee, and Edward H. Harriman, trustee, in the form of transfer and consent endorsed on this certificate, nor until this certificate shall be surrendered to the undersigned for cancellation, as provided by said agreement.

The holder or holders of this certificate of interest is and are entitled to receive the net proceeds (after paying the cost of collecting

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and disbursing the same, including the trustee's fees) of any dividend or dividends declared or to be declared, and of any funds which may come into the possession of the undersigned as the holder or owner of any of the shares of capital stock of the said ——— ——— Company in respect of which this certificate is issued.

At the end of the full term of ten years from the day, on which the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business from Salt Lake City, Utah, to San Pedro, California, the registered holder of this certificate may surrender the same to the undersigned; and, upon payment of any sums due or to become due to the trustee under the terms of said agreement, shall be entitled to receive from the trustee, certificates in the name of such holder for the shares of capital stock in respect of which this certificate was issued.

By the acceptance of this certificate, the holder thereof shall be bound by all the terms and provisions of said agreement, dated June 7, 1903, as fully and to the same extent as if such holder were a party thereto and had duly executed an agreement to abide thereby; and no holder thereof, other than "William A. Clark, trustee, and Edward H. Harriman, trustee," whether the cestui que trust of said Clark, or of said Harriman, nor any other persons, shall have any interest, legal or equitable, in this certificate, or in the shares of capital stock upon which the same is issued, unless or until the said Clark, trustee, and said Harriman, trustee, shall have each in writing consented thereto.

When so assigned, this certificate shall be transferred only upon surrender thereof to the trustee and upon the execution by the transferee of an agreement in the form prescribed by the said stock trust agreement.

THE FARMERS' LOAN AND TRUST COMPANY,
Trustee,

By ——— ———.

Attest:

———,
Secretary.

There shall be endorsed upon said certificates of interest a form of assignment substantially in the following form:

Assignment.

For value received, —— hereby sell, assign, and transfer unto ——— ——— the within certificate of interest based upon ——— ——— shares of the capital stock of the ———, and all of —— interest therein, and do hereby irrevocably appoint ——— ——— attorney to transfer said certificate upon the books of the Farmers' Loan and Trust Company, with full power of substitution in the premises.

Dated ——— ———.

No such assignment shall become effectual to pass any title to, or right or interest in the said certificate, or in the shares of capital stock upon which the same is based, until there shall have been en-

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dorsed in writing thereon, a consent substantially in the following form:

"Consent is hereby given to the above assignment of this certificate, and to the transfer thereof, to ——— ———.

"WILLIAM A. CLARK, *Trustee.*
"EDWARD H. HARRIMAN, *Trustee.*

"In presence of: ."

Nor shall such assignment or consent be received from any intended transferee by the trustee for any purpose until such intended transferee shall have executed and delivered to the trustee, by endorsing the same upon such certificate so to be transferred, an undertaking in the following form:

"The undersigned accept this certificate, subject to all the terms and conditions of the agreement dated June 3, 1903, therein mentioned, by which the undersigned agree to be fully bound as if a party thereto, and agree ——— ——— to hold all interest acquired thereby, and by any new certificate of interest, if any, issued in respect thereof under and subject to the terms of said agreement."

Upon the due execution of all of which and the presentation thereof to the trustee, it may, but not otherwise, cause such transfers to be made and entered of record.

SECTION 3. Said certificates of interest as to the shares of stock in each of said several companies shall be issued and delivered to the parties of the first and second parts in their joint names, in equal amount, so that each of the parties of the first and second parts shall respectively receive from the trustee, each one-half in number and one-half in par value of the capital stock in each of said companies now, or from time to time, transferred or delivered to the trustee, and in respect of which said certificates of interest may be issued.

SECTION 4. No transfer of any of such certificates of interest shall be made by the trustee upon its books or otherwise, unless such certificates shall be first surrendered and returned to the trustee for cancellation, and shall have been by it canceled; nor unless the same shall each bear endorsed thereon the written consent to such transfer signed by each of said parties of the first and second parts, nor until such proposed transferee shall in writing consent to all the terms of this instrument, and agree to be bound thereby as if a party thereto, and to be bound and limited by the terms and conditions written in and endorsed upon said certificates of interest.

SECTION 5. The trustee may from time to time make such reasonable rules respecting the making and issuance of certificates of interest, and the transfer thereof, as it may find necessary; and, upon the written request of all the holders of outstanding certificates of interest, it shall make, adopt, and enforce any rule or regulation concerning the assign-

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ment or transfer of such certificates of interest, which all of said holders of outstanding certificates of interest may so request.

ARTICLE V.

SECTION 1. The trustee may collect any dividends paid or payable, declared or to be declared, by any of said companies, and any funds due to any of them from any source whatever, in respect of the said shares of capital stock so held by the trustee, and shall immediately, upon such receipt and collection of any such dividends or funds, pay over any such dividends or funds to the parties of the first and second parts, or their successors or assigns, ratably and according to their respective holdings of said certificates of interest representing the stock upon which such dividends or funds has been paid as appears by the records of the trustee, and may also pay over the like ratable proportion of any such dividends or funds to any registered holder of such certificates of interest, whose holding thereof was acquired by any assignment of such certificates of interest, with and upon the written consent of the parties of the first and second parts, and upon the said transfers, consent and undertaking, as provided by section 4 of article IV of this agreement.

SECTION 2. The trustee will at any time, upon the written request of the parties of the first and second parts, or the successor in trust of either of them, issue to the persons jointly named by said parties of the first and second parts, or said successor, its proxy or proxies upon all of the shares of capital stock of each of said several companies then held by it and registered in its name, to be voted at any annual, special, adjourned, or called meeting, of the stockholders of any of the said companies.

SECTION 3. At least sixty days before the day of the annual meeting of the stockholders of any of the said companies, the parties of the first and second parts shall, in writing, either jointly or separately, notify the trustee of the names of the persons to whom the trustee shall issue the proxy or proxies mentioned in section 2 of this article. If the names so notified to the trustee are not identical, the trustee shall transmit to each of the parties a copy of the said notice of the other party, and unless thirty days before the day of such annual meeting the parties of the first and second parts shall have lodged with the trustee an agreement or consent to the names of the same persons to whom said proxies shall issue, it shall then be the duty of the trustee, not less than twenty days before the day of such meeting of the stockholders, to call, in writing, upon each of the parteis of the first and second parts to each nominate a number of persons, not more than one-half of the number of persons to be elected as directors at such meeting, and thereupon the trustee shall issue its proxy or

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proxies to such person or attorney as it may select to appear at such annual meeting, and there to vote all the shares of capital stock in such company so held by said trustee, for directors thereof, one-half of the number of directors to be the persons so nominated to it for such purpose by each of the said parties of the first and second parts, respectively. Any communication provided to be made hereby may be made between the parties or their duly appointed attorney by letter or by telegrams sent at the expense of the trust. In case the number of directors to be chosen for any such company shall be an odd number, then the president of the trustee shall be elected as one of said directors, unless said parties of the first and second parts shall jointly nominate another person to be so elected, and the remaining directors shall be elected, one-half from the persons nominated for such office by the party of the first part, and one-half from the persons nominated for such office by the party of the second part.

SECTION 4. If the said parties shall include in their said nominations of persons to be voted for as directors by the trustee, as provided for in section 3 of this article, the names of the same person or persons, the trustee shall, by letter or by telegram, notify each of said parties of the first and second parts of the fact of such double nomination, and in such case either of said parties may withdraw the name of the person so twice nominated and substitute the name of another person to be voted for by the trustee or its attorney in fact; but in case either of said parties of the first or second parts shall fail to nominate some person in lieu of the person so nominated by both parties, then the president of the trustee shall select some managing officer of the trustee to be voted for as such director in lieu of one of said double nominations by one of said parties.

SECTION 5. In case it shall happen at any time while the capital stock of the said several companies, or any of them, remains deposited with the trustee, that the stockholders in any of said companies shall be called at any regular or special meeting to act upon any question other than the election of directors, the trustee shall issue its proxy upon said capital stock to the person or persons whom the said parties of the first and second parts may jointly request. In case the said parties shall not agree as to the person so to be appointed, the trustee shall select some discreet and proper person to vote upon such question in such meeting in the manner and as the parties hereto may in writing request; and in case no such request shall be jointly made by said parties, then the trustee shall vote upon such question upon the stock so held by it in the manner and as the president of the trustee shall determine.

SECTION 6. The initiative in all matters in this article provided shall be taken by the parties of the first and second parts hereto,

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and the trustee shall not be charged with any duty except as in this article provided, in case of a failure of the said parties of the first and second parts to agree in direction to the trustee as in this instrument provided.

Article VI.

Section 1. None of the stock held by the trustee under the terms of this agreement, and none of the certificates of interest issued thereunder, shall, until the end of the full term of the ten years hereinafter created, be in any manner, or for any purpose sold, assigned or transferred, or otherwise disposed of, nor shall any interest therein, or right thereto, legal or equitable, be sold, transferred or assigned, or otherwise disposed of by either the party of the first or the party of the second part hereto, except upon the consent in writing of the other of said parties, first had and obtained and lodged with the trustee; nor unless the party hereto desiring to effect such sale, assignment or transfer, or other disposition shall have first offered the other of said parties hereto the right and opportunity to purchase the same stock certificates, interest, legal or equitable, or right, on as favorable terms, and such party shall neglect to avail himself of such opportunity for the space of thirty days.

Section 2. Nothing in this article, however, shall be construed to prohibit either of the said parties of the first and second parts, respectively, from making and delivering to himself or to his *cestuis que trust*, or associates, receipts, or other instruments, in form negotiable or otherwise, hereinafter termed "Certificates of interest," in respect of the number of shares of stock in each of said companies which he has or which such associates or *cestuis que trust* have deposited under said trust, or with their said respective personal trustees under some agreement satisfactory to such personal trustee and to the owners of such capital stock so deposited with the said personal trustee; but such agreement or arrangement shall be so made as to provide that none of the owners of such certificates of interest so issued by either one of the said personal trustees shall, by virtue of such ownership, or otherwise, in any manner interfere with the control, ownership, use, custody, and possession of said third party of the capital stock so deposited by said personal trustee with the trustee under this agreement, nor shall any such arrangement or agreement charge the trustee under this agreement with any duty to any holder of any such personal trustee certificate, nor shall the party of the third part be required to recognize any such personal trustee certificate in any manner, or for any purpose whatever.

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SECTION 3. At the end of the term hereby created, the parties of the first and second parts covenant to and with each other and to and with the trustee to surrender to the said trustee any and all certificates of interest issued by the trustee and respectively held by them, or either of them, and thereupon the trustee may, and it hereby covenants and agrees to and with each of the other parties hereto that it will, upon the request of either of said other parties, assign the capital stock, or capital stock certificates represented by said surrendered certificates of interest, jointly to and in the names of the parties of the first and second parts, and shall deliver to each of the said parties of the first and second parts the certificates of capital stock in any of said several companies which are represented by the certificates of interest issued against the said capital stock by the trustee, and which shall be surrendered to the trustee by said respective parties, or it may, upon a like surrender by the holders thereof, assign into the names of such holders of its certificates of interest and deliver to such holder or holders of its said certificates of interest the number of shares of capital stock in any of said companies and in the par value in respect of which the trustee had issued its said certificates of interest, provided that such holder or holders of said certificates took and held the same under the terms and upon the written consents of the said parties of the first and second parts, and upon the other conditions provided for by this instrument; and upon such assignment and delivery, the said capital stock may be transferred upon the books of the said several companies into the names of such assignees. Upon any such assignment and delivery of said shares of capital stock by the trustees to the holders of any certificate of interest issued by the trustee, the trustee shall not thereafter be charged with any duty of liability in respect of any of said capital stock or certificate of interest.

SECTION 4. Each of the parties of the first and second parts covenants with the other, that any and all shares of stock and stock certificates received by him, under the terms of section 3 of this article, will not be sold or offered for sale at any time after receiving the same, until the other of said parties shall have been given the right to purchase such shares of capital stock on as favorable terms as the same or any part thereof are offered for sale or agreed to be sold, or sold to any other person, firm or company; it being the intention of each of the parties hereto to give to the other a preferential right to purchase any of said shares of capital stock upon any sale or other disposition thereof.

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ARTICLE VII.

SECTION 1. In case the parties of the first and second parts, respectively, may desire to wind up the business, distribute the assets, or otherwise bring about a dissolution of the said California Improvement Company, the Empire Construction Company and the Los Angeles Terminal Land Company, or some of them, or for any other purpose to withdraw the shares of stock of any of said companies from the trust hereby created, then upon the surrender of the certificates of interest issued by the trustee in respect of the shares of the capital stock of any such company, the trustee may, and upon the joint request of the parties of the first and second parts shall, assign the said stock certificate and deliver the same to such person or persons as may be named in such request; and thereupon the trustee shall not be further charged in respect to any stock in or business of such company and this agreement shall no longer affect the same.

ARTICLE VIII.

SECTION 1. The provisions of this agreement shall be binding and in full force and effect from the date hereof, and for the further full term of ten years from the day on which the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business between Salt Lake City, Utah, and San Pedro, California; and the parties of the first and second parts covenant and agree that they will cause the San Pedro, Los Angeles and Salt Lake Railroad Company to certify to the trustee the date at which it is so open for business, and that the said certificate shall be conclusive as to the fact so stated.

SECTION 2. It is nevertheless agreed by all the parties hereto that this agreement may at any time be modified, changed, or abrogated, in whole or in part, upon the consent of all of the holders of record of the said certificates of interest issued by the trustee if and when the same is approved in writing by the trustee.

ARTICLE IX.

SECTION 1. The parties of the first and second parts jointly and severally covenant and agree to and with each other and with the trustee to indemnify it and to save and keep it harmless from any loss, charges, or damages which the trustee may incur by reason of its holding the legal title to or the ownership in and custody of the said several shares of capital stock in any of said several companies.

SECTION 2. They also covenant and agree to pay each one-half of the reasonable compensation to be paid to the trustee for itself and

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for its agents, servants, or attorneys, for anything done or to be done by them or any of them in the performance of the duties of the trustee under the terms of this instrument, and any costs, damages, or expenses incurred by the trustee in any suit or action which may be brought or conducted by any person having or claiming to have an interest in the subject-matter of the trust estate and in which the trustee may be sued or, if it elect, in which it may voluntarily appear

ARTICLE X.

SECTION 1. In case the said William A. Clark shall at any time die or resign as trustee for his said *cestui que trust*, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest, issued by said William A. Clark to himself and to the persons who deposited any of said capital stock with said Clark, may, by a majority vote of all shares represented in said certificates, select some other person to be trustee in lieu and in place of said William A. Clark; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the *cestuis que trust* making such selection, the said person so selected in place of said Clark may execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Clark to all intents and purposes as if such person had been originally the party to this instrument instead of said Clark.

SECTION 2. In case the said Edward H. Harriman shall at any time die or resign as trustee for his said *cestuis que trust*, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest issued by said Edward H. Harriman in respect of said capital stock may, by a majority vote of all of said certificates of interest, select some other person to be trustee in lieu and in place of said Edward H. Harriman; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the *cestuis que trust* making such selection, the said person so selected in place of said Harriman may execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Harriman to all intents and purposes as if such person had been originally the party to this instrument instead of said Harriman.

IN TESTIMONY WHEREOF, the said party of the first part and the said party of the second part have hereunto subscribed their names and affixed their seals; and the said party of the third part, for the

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purpose of signifying its acceptance of the trust herein and hereby created, has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary, the day and year first above written.

Signed in triplicate.

W. A. CLARK. (L. S.)

W. A. CLARK *as trustee.* (L. S.)

EDWARD H. HARRIMAN *as trustee.* (L. S.)

THE FARMERS' LOAN AND TRUST COMPANY,
Trustee

(SEAL.) By E. S. MARSTON, *President.*

Attest:

SAM SLOAN, Jr., *Sec'y.*

United States Circuit Court, District of Utah.

No. 993. In equity.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark,
Defendants.

SEPARATE ANSWER OF THE DEFENDANT EDWARD H. HARRIMAN TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

This defendant now and at all times hereafter saving to himself all manner of benefit and advantage of exception which

can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained or to so much and such parts thereof as he may be advised it is material or necessary for him to make answer unto, answering, says:

I.

He admits that all the corporations mentioned in Subdivision I of the petition were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them respectively are located and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign nations.

II.

(1) He denies that from January 1, 1901, or at any time he and the defendants Jacob H. Schiff, Otto H. Kahn, and James Stillman, with certain other persons, including the defendants Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that on the 23d day of May, 1898, he became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, he became and ever since has been and still is president of said corporation.

(3) He admits that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(4) He admits that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) He admits that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 13th day of February, 1908, when he resigned.

(6) He admits that the said James Stillman was a member of the executive committee of the board of directors of said Union Pacific Railroad Company from the 8th day of December, 1897, until the 13th day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(8) He admits that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted he denies each and every allegation of subdivision II. of the petition.

III.

(1) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, which it acquired in 1897, at a sale made under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in subdivision III. of the petition, and foreclosing mortgages securing bonds issued by the company incorporated under said act of Congress, approved July 1, 1862, to construct said railroad, and has ever since owned said line.

(2) He admits that defendant Union Pacific Railroad Company owns a line of railroad from Kansas City, Missouri, to Denver, Colorado, which it acquired in 1898, under decrees foreclosing the lien of the Government of the United States thereon arising under the Acts of Congress mentioned in said subdivision of the petition, and foreclosing mortgages securing bonds issued by the "Union Pacific Railroad Company, Eastern Division" and the "Kansas Pacific Railway Company," and has ever since owned said line.

(3) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Denver to Cheyenne, Wyoming, which it acquired at a sale under foreclosure decrees in 1898, and has ever since owned said line; and that said defendant Union Pacific Railroad Company also owns a line of railroad from Julesburg to La Salle, Colorado, which it acquired by purchase from the owners thereof in 1899, and which it has ever since owned.

(4) He admits the consolidation of "The Union Pacific Railroad Company," incorporated under the act of Congress approved July 1, 1862, the "Kansas Pacific Railway Company," and the "Denver Pacific Railway and Telegraph Company" into and under the name, style, and title of "The Union Pacific Railway Company," and avers that such consolidation occurred on or about January 24, 1880.

(5) He admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California; and he admits that the Western Pacific Railroad Company was also organized under the laws of said State. He admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." He admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company commenced the construction and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) He refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petitions respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for and to the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (13 Stat., 356; 12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439).

(7) He admits that since 1897, the Oregon Short Line Railroad Company, and since 1896, The Oregon Railroad and Navigation Company each has owned lines of railroad as alleged in subdivision III. of the petition.

(8) He admits that defendants Union Pacific Railroad

Company, Oregon Short Line Railroad Company, and The Oregon Railroad and Navigation Company, each owns and operates important branch lines of railroad.

(9) He admits that prior to January 1, 1901, the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all the capital stock of defendant Oregon Short Line Railroad Company, and that prior to said date, the Oregon Short Line Railroad Company acquired and has ever since owned and still owns substantially all the capital stock of defendant The Oregon Railroad and Navigation Company.

(10) He admits that by means of such stock ownership the Union Pacific Railroad Company has, since its acquisition, been able to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of The Oregon Railroad and Navigation Company, but he avers that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company, in its own name and by its own officers and agents; and that the railroads and other property of The Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by The Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(11) He admits that prior to and at all times since the 1st day of January, 1901, the lines of railroad owned by defendant Union Pacific Railroad Company, Oregon Short Line Railroad Company, and The Oregon Railroad and Navigation Company, respectively, have been operated as one system and that said lines, extending from Council Bluffs, Iowa, and Kansas City, Missouri, to Ogden, and Salt Lake City, Utah, Butte, Montana, and Portland, Oregon, have composed and still compose

continuous through lines, operated harmoniously and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single company.

(12) He admits that in the year 1901 The Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia rivers and the Pacific Ocean; and he avers that in the year 1904, the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized, that all of its stock was acquired by The Oregon Railroad and Navigation Company and two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships, one of 2,317 tons and one of 1,836 tons, between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia rivers.

(13) He denies that The Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan and China or other Asiatic ports.

(14) He admits that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and that all of its capital stock was acquired and has ever since been and still is owned by said The Oregon Railroad and Navigation Company; and he admits that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland, Oregon, and Asiatic ports under charter; but he denies that said steamship company has ever owned or now owns any steamships or has ever operated or now operates any regular line of steamships.

(15) He denies that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic

Steamship Company to compete to any considerable or substantial extent with lines of steamships operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(16) He admits that the Southern Pacific Company was on January 1, 1901, and still is, the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(17) He admits that said Southern Pacific Company in 1901 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and New York and Galveston and between New Orleans and Havana which connect at New Orleans and Galveston with said rail lines.

(18) He admits that on the 1st day of January, 1901, the Southern Pacific Company owned, has ever since owned and now owns all the capital stock of the Central Pacific Railway Company, which he avers is a corporation organized and existing under the laws of the State of Utah, and which acquired and now owns and operates all the railroads and other property formerly owned and operated by the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, the corporations referred to in the aforesaid acts of Congress, and by the California corporation into which they were merged by consolidation; and he also avers that said Southern Pacific Company on and prior to the 1st day of January, 1901, and ever since that date has held, possessed, and operated and still holds, possesses, and operates the railroads of said Cen-

tral Pacific Railway Company, with their appurtenances, under and by virtue of instruments of lease theretofore made and entered into.

(19) He admits that on January 1, 1901, said Southern Pacific Company owned, has ever since owned and still owns 100,500 shares, out of a total of 200,000 shares of the capital stock of the Pacific Mail Steamship Company and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands and Chinese and Japanese ports; and also a line of steamships between San Francisco and Panama; but he denies that the said line of steamships, with the railroad of the Panama Railroad Company and steamships operating on the Atlantic Ocean, form a through line between New York and San Francisco via the Isthmus of Panama.

(20) He denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight between points in the Mississippi Valley and in the Eastern States or elsewhere and the Pacific coast and points in Colorado and other interior States.

(21) He denies that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the central States.

(22) He avers on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link about 1,000 miles in length, and the Union Pacific Railroad

Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all of the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line extending from Ogden, Utah, to the Pacific Ocean, at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made by the Union Pacific Railroad Company except with the consent of, and by agreement with said Southern Pacific Company; and while the said Union Pacific Railroad Company, and its constituent companies, to wit: the Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company separately owned connecting lines of railroad operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as hereinbefore alleged, yet he avers that such route via Portland was not only an impracticable route, as a competitor of said Southern Pacific Company, but any attempt of said Union Pacific Railroad Company to use it as such competitor would have greatly injured the said Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which the said Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of business it could have secured over such impracticable route in competition with said Southern Pacific Company; so that the interest of said Union Pacific Railroad Company, and the companies formerly owning its lines, always prevented it and them from using or attempting to use the said route via Port-

land in competition with said Southern Pacific Company upon any business to or from the Pacific coast south of Portland or to or from Asiatic ports.

(23) He denies that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company plying between San Francisco and Portland, and avers that competition between said lines was never practicable.

(24) He denies that ships operated by the Portland and Asiatic Steamship Company, between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company.

(25) He denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points or that such competition was ever practicable.

(26) He denies that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamsphips owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(27) He admits that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad as alleged in subdivision III, of the petition, and admits that the lines of the Union Pacific Railroad Company, in connection with the lines of the Central Pacific Railway Company, operated by the said Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast.

(28) He admits that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, about the year 1900, constituted the only line of transportation by rail from the Pacific coast, south of Portland, Oregon, to the Mississippi Valley and the East, except the lines of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company, in connection with the Union Pacific Railroad, until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(29) He has no knowledge respecting the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports; but he denies that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, was of great volume and embraced both passengers and freight.

(30) He admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but he denies that the lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of the Union Pacific Railroad Company; and he admits that the lines of the Chicago, Burlington and Quincy Railroad Company are competitive with the lines owned and operated by the Union Pacific Railroad Company to a limited extent and between certain points.

(31) He denies that the traffic between the Pacific coast, Asiatic ports, and points on and east of the Missouri and Mississippi rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it

and the lines of said Northern Pacific Railway Company and Great Northern Railway Company and connections and steamship lines controlled by them.

(32) He admits that the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California and Nevada and into Utah, to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City, Utah; and he denies that by said contract or otherwise, there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

(33) He admits that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

IV.

(1) He denies that in the spring of 1901, or at any other time, he and the defendants Schiff, Kahn, Stillman and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and foreign countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines in respect to any such commerce; or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems

and steamship lines or other railway systems or steamship lines; or that he and the said defendants or any of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other trans-continental railway companies or steamship companies; or to place restraint upon any competitive commerce, if any such there was, carried on by such companies; or to monopolize or attempt to monopolize the same; or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) He admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding; but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) He admits that, thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co., 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and still owns; but he denies that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in the petition.

(5) He admits that thereafter, when in 1904 defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company, exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company and it has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of said Southern Pacific Company owned by said

V.

(1) He denies that he and the said Schiff, Kahn, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of subdivision V of the petition respecting any conspiracy or combination for that or any other purpose between any of the defendants to this suit.

(2) He admits that in the year 1901, said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase, the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000; but he denies that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

(3) He admits the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company, as alleged in said petition.

(4) He admits the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,841 par value of the stock of said Northern Securities Company represented by certificates issued in his name, and in the

name of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company; and he admits that neither he nor the said Pierce had any personal interest in said shares.

(5) He admits the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He admits the commencement thereafter of a suit by him and by said Oregon Short Line Railroad Company, Winslow S. Pierce, and the Equitable Trust Company of New York, as alleged in the petition; and he admits that the relief sought by the complainants in said suit was denied by the decrees entered therein. But he avers that the said courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its codefendants in said suit; and that as a result of said distribution, and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company, and 216,520 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) He avers that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received

by it, as sales could be advantageously effected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit, also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

(8) He denies that he and the said Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Winslow S. Pierce, the Equitable Trust Company of New York, and this defendant against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade as in said petition alleged.

(9) He denies each and every allegation of said subdivision V not herein expressly admitted.

VI.

(1) He admits that prior to the year 1902, defendant William A. Clark, together with others, caused to be incorporated the defendant the San Pedro, Los Angeles and Salt Lake Railroad

Company, but denies that it was for the purposes alleged in the petition, and refers to the articles of incorporation of the company last named for the purposes of its incorporation.

(2) He admits that on or about the 9th day of July, 1902, he entered into and executed with defendant William A. Clark an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement; but denies that said agreement was entered into for any of the purposes alleged in Subdivision VI. of the petition, or for any purpose not set forth or mentioned in said "Exhibit A;" and he avers that in entering into and executing said contract he was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) He admits that pursuant to the said contract, "Exhibit A," other contracts between him and the said Clark and between the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but denies that any of such other contracts were of the character or for any of the purposes alleged in said Subdivision VI. of the petition.

(4) He admits that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between him, as trustee for the defendant Oregon Short Line Railroad Company, and William A. Clark, individually and as trustee for his associates, and defendant the Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that the stock of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with and is still held by the Farmers' Loan and Trust Company, defendant, as stipulated and provided in and by said contract "Exhibit B."

(5) He denies each and every allegation of a conspiracy or combination by and between himself and the defendants Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company, and Oregon Short Line Railroad Company, or any of

them, for any of the objects or purposes mentioned in Subdivision VI. of the petition, or for any other purpose; and he denies each and every allegation in Subdivision VI. of the petition not herein in this subdivision expressly admitted; and he avers the facts to be as follows, viz:

(*a*) As early as 1888 the Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put into operation the said line from Salt Lake City, via Sandy, Provo, Juab, and Leamington, to Milford, a distance of 221.9 miles, and various branches, all of which are more particularly described as "Parcel I." and "Parcel II." of article second in the contract "Exhibit A" to the petition herein. It had complied with all the laws of the Territory of Utah and the State of Nevada necessary to entitle it to construct said line and had surveyed and located the said line and under due corporate action had prepared and filed maps and profiles of the same in the proper land offices in Utah and Nevada to entitle it to, and it had acquired the right of way for said line across the lands of the United States in a general southwesterly direction from Milford through Utah and across the State of Nevada to the boundary line between the States of Nevada and California. The said maps had been approved under the rules of the Department of the Interior, and the Oregon Short Line and Utah Northern Railway Company had graded and completed the roadbed of said line ready for the rails from Milford to the boundary line between Utah and Nevada; and had practically completed the grading of said line from said boundary line southwesterly to Calientes, Nevada, a distance of 339 miles from Salt Lake City; and had completed the grading of a branch of said line from Calientes to Pioche, Nevada.

(*b*) On account of its inability at that time to procure the money necessary to complete the said line, said The Oregon Short Line and Utah Northern Railway Company discontinued and suspended the work of constructing said line in 1891. The company last named continued in such financial difficulty that on or about the 13th day of October, 1893, all of its railroad and other assets were placed in the hands of receivers, who administered the same until the sale thereof under decrees of the circuit courts of the United States for the districts of Utah and Idaho, on or about the 9th day of January, 1897, when they were bought by or for defendant Oregon Short Line Railroad Company.

(*c*) The defendant Oregon Short Line Railroad Company after its acquisition of the railroads and other assets of The Oregon Short Line and Utah Northern Railway Company upon the foreclosure sale thereof as aforesaid was until 1901 financially unable actively to resume the construction of said line from Milford to Los Angeles; and in its endeavor to provide for the completion of said line of railroad it conveyed that portion of said line, including the completed grade from Milford to the boundary line between the States of Utah and Nevada, to the Utah and Pacific Railroad Company, a corporation of the State of Utah, all the capital stock of which was owned by defendant Oregon Short Line Railroad Company, and conveyed that portion of said line from the boundary line between Utah and Nevada to the boundary line between Nevada and California, including the partially constructed grade of the main line from the Utah boundary line to Calientes, and of the branch line from Calientes to Pioche, to the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete and own that portion of said line that was to be situated in the State of California, the defendant Oregon Short Line Railroad Company caused

to be incorporated and acquired all the capital stock of the Utah, Nevada & California Railroad Company in California.

(*d*) Early in 1901, said Utah & Pacific Railroad Company and said Utah, Nevada & California Railroad Company, aided and assisted by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing where necessary the grades which had been constructed as aforesaid from Milford to Calientes, and in doing other work necessary in the construction of the said line to Los Angeles.

(*e*) On or about the date when the construction of said line was resumed in 1901, as aforesaid, defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah with power to build or acquire railroads in that State, but it did not acquire, under the laws of Nevada, the right to build or acquire railroads in that State, or acquire the right, under the laws of California, to build or acquire any railroad north or east of Riverside, until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena, and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said The San Pedro, Los Angeles and Salt Lake Railroad Company when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company, and the companies controlled by it as aforesaid. Said The San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(*f*) Said The San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way, or done any work of constructing a railway.

(*g*) Soon after the incorporation of said The San Pedro, Los Angeles and Salt Lake Railroad Company, it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and the Utah boundary line, and between Calientes and Pioche, and, to that end, located and constructed by the Utah Northern and Oregon Short Line Railway Company, as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company, and, to that end, said The San Pedro, Los Angeles and Salt Lake Railroad Company caused the said line to be surveyed and prepared maps and profiles adopting the same as its own, and attempted to file the same in the local land office of the United States in Nevada for the purpose of securing the right of way, and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to take forcible possession of the same.

(*h*) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the circuit court of the United States for the district of Nevada a suit against said The San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railroad Company and others, and upon the hearing of said cause, an injunction was issued restraining and enjoining the

said defendants from interfering with the possession and rights of said complainant, and said Utah, Nevada and California Railroad Company in a suit against said The San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax titles of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada and California Railroad Company and said Utah and California Railway Company involving the said right of way was finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(*i*) As a result of such decision rendered prior to the execution of "Exhibit A" to the petition herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and the said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it through the ownership of stock, established their right to the partially completed railroad and the located line and right of way therefor from Salt Lake City, Utah, to the boundary line between the States of Nevada and California and were rapidly proceeding with the completion of said line to Los Angeles; while the said San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale and had partially constructed an extension eastwardly for a distance of about sixty miles.

(*j*) And this defendant is informed and believes and upon such information and belief avers that defendant The San Pedro, Los Angeles and Salt Lake Railroad Company would never have undertaken the construction of a line of railroad from Los Angeles to Salt Lake City, except for its expectation and belief, and the expectation and belief of the defendant Clark that it could acquire without compensation the right of way and partially constructed line located and constructed as

aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford, through Utah, and across the State of Nevada to the California boundary line; and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that said Oregon Short Line Railroad Company would construct and extend its own line from Milford, Utah, to Los Angeles, California, said The San Pedro, Los Angeles and Salt Lake Railroad Company, and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles, California, to Salt Lake City, Utah, but for their ability to negotiate and execute the contract, "Exhibit A" to the petition herein providing for the construction and establishment of such a line under the terms and conditions in said contract set forth.

(6) He denies that the said "Exhibit A" to the petition, or that anything done in executing and carrying out the same, has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) He denies that the aforesaid act of Congress, approved July 2, 1890, or any other law of the United States was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and avers that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein and all agreements relating to the construction or abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner

interfere with such contracts, corporate powers and matters is in excess of the powers of Congress under the Constitution of the United States and is, therefore, void.

He avers that although prosecuted diligently after the making of said contract "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and the defendants avers that on the 9th day of July, 1902, when the said agreement was made and entered into, there was not then and, from the nature of the work to be done, there could not for several years be, any competition of any sort between the parties to the said agreement in transportation, to be suppressed or in any way restrained; and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress, approved July 2, 1890.

VII.

(1) He denies that, pursuant to any conspiracy to restrain trade and commerce among the several States or with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems, he and the defendants Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said The Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904, the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company.

(3) He admits that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned $10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition.

(4) He denies that he or any associates of his or defendant, Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said the Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said the Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He admits that certain lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose stock was owned by the Southern Pacific Company and that certain other lines of railroad surveyed and partially constructed within the State

of California formerly owned by corporations whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were conveyed to a company incorporated under the laws of the State of California under the name, style, and title of "Northwestern Pacific Railroad Company," and that one-half of the capital stock of the last-named corporation is owned by the Southern Pacific Company and the other half by the Atchison, Topeka and Sante Fe Railway Company; but he avers that all of the corporations which owned and conveyed said lines, and the said Northwestern Pacific Railroad Company itself, were incorporated under the laws of the State of California, and that all such sales and consolidations were made and effected under and by authority of the laws of said State.

(8) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that competition between such lines has been eliminated or in any wise restricted.

(9) He denies that any of the acts or transactions alleged in said petition were committed or occurred in pursuance of any conspiracy, combination, or contract to restrain trade or commerce among the several States and with foreign countries; or in pursuance of any conspiracy or combination for any purpose.

VIII.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed

traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD H. HARRIMAN,
Defendant.

By P. L. WILLIAMS,
His solicitor.

ROBERT S. LOVETT,
Of Counsel.

United States Circuit Court, District of Utah.

No. 993. In equity.

THE UNITED STATES OF AMERICA,
Complainant,
against
UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark,
Defendants.

THE SEPARATE ANSWER OF THE DEFENDANT SOUTHERN PACIFIC COMPANY TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

This defendant now and at all times hereafter saving to itself all manner of benefit and advantage of exception which

can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

(1) It admits that it and the other corporations mentioned in subdivision I. of the petition were at the times alleged in said petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign countries.

(2) It has no knowledge respecting the matters alleged in subdivision II. of the petition.

(3) It admits that defendant Union Pacific Railroad Company since January 1, 1901, has owned and operated and now owns and operates lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; from Denver to Cheyenne, Wyoming; and from Julesburg to La Salle, Colorado; and it admits that said lines of railroad, except the line from Julesburg to La Salle, were constructed by the corporations named in the petition with the aid in lands and bonds of the United States granted by the acts of Congress approved July 1, 1862 (12 Stat., 479), and July 2, 1864 (13 Stat., 356), and the acts amendatory of and supplementary to the said acts.

(4) It is without knowledge of the consolidation of the corporations formerly owning the above-named lines into "The Union Pacific Railway Company," but is informed and believes that such consolidation was effected on January 24, 1880.

(5) It admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and it admits that the Western Pacific Railroad Company was also organized under the laws of said State. It admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." It admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company of California commenced the construction and after the consolidation aforesaid the corporation formed by such consolidation completed the said railroad from Sacramento, California, to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) It refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for and to the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 290; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439).

(7) It admits that the defendants Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Com-

pany own and operate the lines of railroad alleged in said petition; and it admits that they and said Union Pacific Railroad Company respectively operate important branch lines of railroad.

(8) It is without knowledge respecting the control of the Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company by the Union Pacific Railroad Company.

(9) It is without knowledge of the ownership by The Oregon Railroad and Navigation Company in 1901 or at any other time of any steamships, or of the ownership of stock of the Portland and Asiatic Steamship Company, as alleged in the petition.

(10) It admits that it was on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona, and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(11) It admits that in 1901 it also owned and operated, has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans, New York and Galveston, and between New Orleans and Havana which connect at New Orleans and Galveston with the said rail lines.

(12) It admits that on January 1, 1901, it owned, has ever since owned and now owns all the capital stock of the Central

Pacific Railway Company, a corporation organized and existing under the laws of the State of Utah, and avers that said Central Pacific Railway Company succeeded to the ownership of and now owns the railroad from San Francisco to Ogden with the branch lines formerly owned by the Central Pacific Railroad Company as originally existing and as constituted by the consolidation aforesaid with the said Western Pacific Railroad Company; but it avers that this defendant on and prior to the 1st day of January, 1901, and ever since that date has held, possessed, and operated, and still holds, possesses, and operates all the railroads of said Central Pacific Railway Company with their appurtenances under and by virtue of instruments of lease theretofore made and entered into.

(13) It avers that said Central Pacific Railroad Company, as originally existing and as constituted by the consolidation aforesaid with the Western Pacific Railroad Company, was unable to pay its indebtedness to the Government of the United States, arising from the issue of government bonds under the provisions of the aforesaid acts of Congress to aid in the construction of said railroad from San Francisco to Ogden, at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its own bonds aggregating large amounts as such indebtedness matured during and prior to the year 1899.

(14) It avers that the said Central Pacific Railway Company organized as aforesaid under the laws of the State of Utah, acquired by purchase from said Central Pacific Railroad Company on or about the 29th day of July, 1899, the railroad constructed as aforesaid from San Francisco to a connection with the Union Pacific Railroad at Ogden, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale, and of the said Central

Pacific Railway Company to make such purchase was conferred upon the said corporations, respectively, by the laws of the States of Utah, Nevada, and California.

(15) It avers that such purchase and sale was made for the purpose of paying the indebtedness of said Central Pacific Railroad Company to the United States of America and to the holders of its own bonds; that all such indebtedness was thereby paid and discharged in full, and that the incorporation and organization of said Central Pacific Railway Company and the said purchase and sale and the payment of all such indebtedness were caused and brought about by this defendant, and that the means for paying and satisfying all such indebtedness and rehabilitating the railroads of the said Central Pacific Railway Company were provided and procured by or at the instance of this defendant.

(16) It admits that on January 1, 1901, it owned, has ever since owned, and still owns, 100,500 shares out of a total of 200,000 shares of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San Francisco and Panama; but it denies that the said line of steamships, with the Panama Railroad Company and steamships operating in the Atlantic Ocean, forms a through line between New York and San Francisco via the Isthmus of Panama.

(17) It denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the lines of the Union Pacific Railroad Company for the transportation of

freight from points in the Mississippi Valley and in the Eastern States or elsewhere to Pacific coast points and points in Colorado and other interior states; and it denies that the steamship lines of this defendant between New York and New Orleans and between New York and Galveston, together with rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(18) It avers on the contrary that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic; and that this defendant through its possession and operation of the Central Pacific Railroad under lease as aforesaid and by its ownership of all the stock of the Central Pacific Railway Company controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof, and the Pacific coast south of Portland or Asiatic ports could be made by defendant Union Pacific Railroad Company, except with the consent of and by agreement with this defendant; and while the defendants Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company separately owned connecting lines of railroad operated as a single system extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, yet this defendant avers that such route via Portland was not only an impracticable route as a

competitor of this defendant but any attempt of said defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company because this defendant would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route, in competition with this defendant, so that the interest of defendant Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Portland in competition with this defendant upon any business to or from Pacific coast points south of Portland or to or from Asiatic ports.

(19) It denies that its rail line between San Francisco and Portland was in active competition with any ships of the Oregon Railroad and Navigation Company between San Francisco and Portland, and avers that competition between said lines was never practicable.

(20) It denies that the ships operated by the Portland and Asiatic Steamship Company in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, between Portland, Oregon, and Asiatic ports, were ever in competition with the Pacific Mail Steamship Company.

(21) It denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden and Portland were ever in active competition with the lines of this defendant between said points.

(22) It denies that any competition between the system of railroads and steamships owned and controlled by this defendant and the system of railroads and any steamships owned or controlled by the Union Pacific Railroad Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(23) It admits that the Atchison, Topeka and Santa Fe Railway Company for a period of more than eight years has been the owner and in control of the lines of railroad alleged in the petition, and that during such period it has been and still is competing with said Union Pacific Railroad Company and this defendant for a large volume of traffic to and from the Pacific Coast and the Orient, and has been competing with the defendant Union Pacific Railroad Company between the Missouri River and various points in Kansas, Colorado and other States.

(24) It admits that the line of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco about the year 1900, constituted the only line of transportation by rail from the Pacific Coast south of Portland, Oregon, to the Mississippi Valley and the East, except the lines of this defendant to the Gulf and the lines of the Central Pacific Railway Company operated by this defendant in connection with the Union Pacific Railroad Company until the completion of the San Pedro, Los Angeles and Salt Lake Railroad Company in the year 1905.

(25) It has no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports; but it denies that the traffic handled by any such steamship line, if any such line was ever operated, competitive between this defendant and the Atchison, Topeka and Santa Fe Railway Com-

pany, was of great volume and embraced both passengers and freight.

(26) It admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company is each the owner of the lines of railroad described in the petition; but it has no knowledge of the ownership of the stock of the Chicago, Burlington and Quincy Railroad Company, or of any competition between any of said lines and the lines of the Union Pacific Railroad Company.

(27) It admits that the San Pedro, Los Angeles and Salt Lake Railroad Company operates a line of railroad extending from San Pedro on the Pacific Ocean in the State of California by way of Los Angeles through the States of California, Nevada and Utah to Salt Lake City, Utah; but it is without knowledge of the character of the title of said company to said railroad; and it admits that said company as the owner of said railroad with its connections is a competitor of this defendant between certain points in southern California.

(28) This defendant admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired 750,000 shares of the capital stock of this defendant of the aggregate par value of $75,000,000, out of a total of 1,978,399 shares, of the aggregate par value of $197,839,900, then issued and outstanding; and it admits that thereafter and on or about the 26th day of February, 1902, said Union Pacific Railroad Company sold said 750,000 shares to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(29) It admits that thereafter on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company

acquired 150,000 additional shares of stock of this defendant which it has ever since owned and still owns.

(30) It admits that when in 1904, this defendant created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of this defendant exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of this defendant; and that thereafter when in 1907, this defendant increased its preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of this defendant exercised its right and subscribed and received 162,000 additional shares of the preferred stock of this defendant, and has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 900,000 shares of the common stock, and 342,000 shares of the preferred stock, making a total of 1,242,000 shares out of a total of 2,726,498 shares of the capital stock of this defendant issued and outstanding.

(31) It denies that defendants Harriman, Schiff, Kahn, Stillman, or Union Pacific Railroad Company caused the said preferred stock to be issued by this defendant.

(32) It admits that the stock of this defendant not owned by said Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places, but it denies that such stockholders, other than defendant Oregon Short Line Railroad Company are or will be unable to elect the directors of this defendant if they

should deem it to their interest to do so in opposition to those voted for by said Oregon Short Line Railroad Company.

(33) It admits that at the annual meetings of this defendant, held since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings, and that by voting upon the said shares through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of this defendant, said Oregon Short Line Railroad Company, has been able to elect the directors of this defendant, but at no such meetings have any votes ever been cast by any such stockholder against the persons so elected.

(34) It denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of this defendant, or exercised any control whatsoever over it, except such as may result from the voting upon the stock of this defendant owned by said Oregon Short Line Railroad Company, as aforesaid, at meetings for the election of directors of this defendant.

(35) It admits that since April 3, 1901, a majority of the persons who have been elected directors of this defendant, have been at the same time directors of the defendant Union Pacific Railroad Company.

(36) It admits that defendant Harriman on April 3, 1901, became chairman of the executive committee and on the 26th day of September, 1901, became the President of this defendant and ever since has been and still is such chairman and president.

(37) It admits that the same person is the chief traffic officer, the same person the chief operating officer, and the same per-

son the chief accounting officer of both companies; and that said companies have jointly employed numerous commercial and other agents but it avers that a large majority of the officers, agents and employees of said companies are separate.

(38) It denies that through the purchase and ownership of said stock by the Union Pacific Railroad Company, or by the Oregon Short Line Railroad Company, or from any other cause, there has been any suppression or restraint of competition in the transportation of commerce among the several States or with foreign countries, or any monopoly in the transportation of any such commerce; and it denies any knowledge of any conspiracy, combination, or contract in restraint of trade or commerce among the several States or between said States and foreign countries, or to suppress or restrain competition therein, or to monopolize or attempt to monopolize transportation of any such commerce.

(39) It is without knowledge respecting any of the other matters alleged in subdivision IV of the said petition.

(40) It is also without knowledge of any of the matters alleged in subdivision V of the petition.

(41) It admits that there is a competition between The San Pedro, Los Angeles and Salt Lake Railroad Company and this defendant between certain points in California.

(42) It is without knowledge of any of the other matters alleged in subdivision VI of the petition.

(43) This defendant admits that pursuant to an agreement with the Atchison, Topeka and Santa Fe Railway Company, a corporation was organized under the laws of the State of California under the name, style and title of the "Northwestern Pacific Railway Company," and that certain other corporations

of the State of California whose capital stock was owned by this defendant and certain other corporations of the State of California whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were consolidated with and merged into said Northwestern Pacific Railway Company under the name, style and title of "Northwestern Pacific Railroad Company," and that the capital stock of said Northwestern Pacific Railroad Company is owned equally by this defendant, and by the Atchison, Topeka and Santa Fe Railway Company; but it avers that all of the said corporations merged and consolidated as aforesaid were incorporated under the laws of the State of California; and the said lines of railroad were situated wholly within the State of California, and the said consolidation and merger was and is authorized and provided for by the laws of said State.

(44) It denies all of the allegations of subdivision VII of the petition in reference to any conspiracy, combination, or contract to restrain commerce among the several States or with foreign countries or to restrain competition in any such commerce or to monopolize or attempt to monopolize transportation in any such commerce.

(45) This defendant is without knowledge of any of the other matters alleged in subdivision VII of the petition.

(46) And this defendant denies all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters

and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct and humbly prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

SOUTHERN PACIFIC COMPANY,
By P. L. WILLIAMS,
Its Solicitor.

ROBERT S. LOVETT,
Of Counsel.

United States Circuit Court, District of Utah.

No. 993. In equity.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, *Defendants.*

THE JOINT AND SEVERAL ANSWER OF THE DEFENDANTS, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, AND THE OREGON RAILROAD

AND NAVIGATION COMPANY TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

These defendants now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties and other imperfections in the complainant's petition contained or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I.

They admit that the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, and these defendants were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them respectively are located, and not further or otherwise, and were and are to that extent, but to that extent only, engaged in trade and commerce among the several States and with foreign nations.

II.

(1) They deny that from January 1, 1901, or at any time, the defendants, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn and James Stillman, with certain other persons who have joined with them from time to time, including the defendants Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) They admit that the defendant Edward H. Harriman

on the 23d day of May, 1898, became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, and not before, he became and ever since has been and still is president of said corporation.

(3) They admit that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(4) They admit that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) They admit that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 13th day of February, 1908, when he resigned.

(6) They admit that the said James Stillman was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the 13th day of February, 1908, and the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) They admit that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the firm name and style of Kuhn, Loeb & Co., but deny that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and they admit that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house and that some of the bonds issued by said companies were sold to said firm.

(8) They admit that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted, they deny each and every allegation of subdivision II of the petition.

III.

(1) They admit that defendant Union Pacific Railroad Company, in 1897, acquired and ever since has been and still is the owner of lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; and from Denver, Colorado, to Cheyenne, Wyoming.

(2) They admit that the said line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, was constructed by a company incorporated by an act of Congress entitled:

> "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,"

approved July 1, 1862 (12 Stat., 489), under the name, style, and title of "The Union Pacific Railroad Company;" and they admit that the said line of railroad extending from Kansas City, Missouri, to Denver, Colorado, was constructed by a company originally incorporated by the Territory of Kansas, as the "Leavenworth, Pawnee & Western Railroad Company," which afterwards assumed the name, style, and title of "Union Pacific Railroad Company, Eastern

Division" and subsequently by authority of a joint resolution of Congress approved March 3, 1869 (15 Stat., 348), changed its name to "Kansas Pacific Railway Company;" and they also admit that the said line of railroad extending from Denver, Colorado, to Cheyenne, Wyoming, was constructed by the "Denver Pacific Railway and Telegraph Company," a corporation organized under the laws of the Territory of Colorado.

(3) They deny that the Union Pacific Railroad Company, the company incorporated by the aforesaid act of Congress approved July 1, 1862, constructed a line of railroad from Julesburg to Denver, but aver that the said branch line of railroad extends from Julesburg to La Salle, Colorado, where it connects with the aforesaid line extending from Denver to Cheyenne, and that it was constructed by the Colorado Central Railroad Company, a corporation of the State of Colorado, which was subsequently consolidated with and merged into the Union Pacific, Denver and Gulf Railway Company, and thereafter was sold under foreclosure decrees against the last-named company, and the purchasers at such foreclosure sale afterward and on or about the 6th day of February, 1899, sold and conveyed the same to defendant Union Pacific Railroad Company and that the said Union Pacific Railroad Company ever since has been and still is the owner thereof.

(4) They aver that the said lines of railroad owned by defendant Union Pacific Railroad Company and extending as aforesaid from Council Bluffs to Ogden, from Kansas City to Denver, and from Denver to Cheyenne, were located, laid out, constructed, connected, consolidated, and put into use and operation as a system of railroads under and pursuant to the aforesaid act of Congress approved July 1, 1862, and an act approved July 2, 1864, entitled:

> "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from

> the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes,' approved July 1, 1862" (13 Stat., 356),

and the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439); and they refer to the said acts and joint resolutions themselves for the provisions, purposes, and effect thereof.

(5) They admit that the said the Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company were consolidated under and by virtue of the aforesaid acts of Congress, and that the corporation formed by such consolidation became and assumed the name, style, and title of "The Union Pacific Railway Company;" and they aver that such consolidation occurred on or about January 24, 1880.

(6) They aver that under and pursuant to the provisions of decrees of the circuit courts of the United States for the district of Nebraska, the southern district of Iowa, the district of Wyoming, the district of Colorado, and the district of Utah, rendered in 1897, in certain suits in equity commenced by F. Gordon Dexter and Oliver Ames, second, against the Union Pacific Railway Company and others for the foreclosure of the first mortgage of the Union Pacific Railroad Company upon the said line of railroad, with its appurtenances in said decrees described; and under the provisions of decrees rendered respectively by the same courts on the same dates in certain suits in equity, commenced by the United States of America as complainant against said the Union Pacific Railway Com-

pany and others for the foreclosure of the lien created by or arising under the aforesaid acts of Congress to secure the indebtedness to the United States of America for its bonds issued under the provisions of said acts to the Union Pacific Railroad Company, the said railroad extending from Council Bluffs, Iowa, to Ogden, Utah, with its appurtanances, was sold, and, upon confirmation of the said sale and full compliance with all the terms and provisions of the decrees of the said courts in said causes the special master of the said courts duly conveyed the said railroad, with its appurtenances so sold, to Union Pacific Railroad Company, defendant herein, by deeds dated the 22d day of January, 1898, whereupon the possession of said railroads and other property so sold was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now holds and possesses the same.

(7) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States, for the District of Kansas and the Western District of Missouri, rendered on the 30th day of July, 1897, in certain suits in equity commenced by the United States of America, as complainant, against said the Union Pacific Railway Company and others for the foreclosure of the lien created by or arising under the aforesaid acts of Congress to secure the indebtedness to the United States of America for its bonds issued under the provisions of said acts to the Kansas Pacific Railway Company; and under and pursuant to the provisions of other decrees of the same courts and of the Circuit Court of the United States for the District of Colorado in suits in equity commenced by various parties to foreclose numerous mortgages executed by said Kansas Pacific Railway Company under its different corporate names, the said line of railroad extending from Kansas City, Missouri, to Denver, Colorado, with its appurtenances in said decrees described, was sold, and

upon confirmation of the said sale and full compliance with all the terms and provisions of the decrees of said courts in said causes, the special master of said courts duly conveyed the said railroad, with its appurtenances to Union Pacific Railroad Company, the defendant herein, by deeds dated on or about the 19th day of April, 1898, whereupon the possession of said railroad and other property so sold was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now holds and possesses the same.

(8) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States, for the Districts of Colorado and Wyoming, rendered on the 31st day of July, 1897, in certain suits in equity, to foreclose the first mortgage of the Denver Pacific Railway and Telegraph Company, the said line of railroad extending from Denver, Colorado, to Cheyenne, Wyoming, with its appurtenances in said decrees described, was sold and upon confirmation of the said sale and full compliance with all the terms and provisions of said decrees of said courts in said causes, the special master of said courts, duly conveyed the said railroad, with its appurtenances to Union Pacific Railroad Company, defendant herein, by deeds dated on or about the 22d day of March, 1898, whereupon the possession of said railroad, with its appurtenances and other property so sold was surrendered and delivered by the receivers appointed in said suits to Union Pacific Railroad Company, defendant herein, which has ever since held and possessed and now holds and possesses the same.

(9) They admit that the Central Pacific Railroad Company of California was organized under the laws of the State of California; and they admit that the Western Pacific Railroad Company was also organized under the laws of said State. They admit that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company

were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." They admit that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company of California commenced the construction, and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento, California, to Odgen, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(10) They refer to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for.

(11) They admit that defendant Oregon Short Line Railroad Company is now and since about the 16th day of March, 1897, continuously has been the owner of lines of railroad extending from the junction with the main line of the Union Pacific Railroad at Granger, Wyoming, to Huntington, Oregon, and of another line of railroad extending from Salt Lake City, Utah, to Butte, Montana—the track in the State of Idaho between Pocatello and McCammon being common to both of said lines. They admit that defendant The Oregon Railroad and Navigation Company is and since about the 18th day of August, 1896, continuously has been the owner of a line of railroad extending from a connection with the line of the Oregon Short Line Railroad Company at Huntington, Oregon, to Portland, Oregon.

(12) They admit that each of these defendants is the owner of important lines of railroad as branches of the lines hereinbefore described; the branches of the lines owned by Union Pacific Railroad Company being located in the States of

Nebraska, Kansas, Colorado, Wyoming, and Utah; the branches owned by the Oregon Short Line Railroad Company being located in the States of Utah, Idaho, Montana, and Wyoming; and the branches owned by The Oregon Railroad and Navigation Company being located in the States of Oregon, Washington, and Idaho.

(13) They admit that long prior to the date alleged in the petition the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Short Line Railroad Company. They admit that long prior to the date alleged in the petition the Oregon Short Line Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Railroad and Navigation Company.

(14) They admit that by means of such stock ownership the Union Pacific Railroad Company has, since its acquisition, been able to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of The Oregon Railroad and Navigation Company, but they aver that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company, in its own name and by its own officers and agents; and that the railroads and other property of The Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by The Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(15) They admit that the lines of railroad owned by these defendants, respectively, have been and are operated as one system and that said lines extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Odgen, Utah, Butte, Montana, and Portland, Oregon, have composed and still compose continuous through lines operated

harmoniously and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single company.

(16) They aver that long prior to July 2, 1890, when the so-called "anti-trust act" of Congress was approved, the Union Pacific Railway Company, the consolidated corporation organized and existing under the acts of Congress, as hereinbefore alleged, acquired a large majority of the stock of the Oregon Short Line and Utah Northern Railway Company, which constructed the lines of railroad now owned by defendant Oregon Short Line Railroad Company, as well as a portion of the lines now owned by the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, and that long prior to said July 2, 1890, said Oregon Short Line and Utah Northern Railway Company acquired a large majority of the capital stock of the Oregon Railway and Navigation Company, the corporation which constructed and formerly owned the line of railroad now owned by defendant the Oregon Railroad and Navigation Company, extending from Huntington to Portland, Oregon, with various branches; and long prior to July 2, 1890, the said lines of railroad extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Ogden, Utah, Butte, Montana, and Portland, Oregon, were and ever since have been operated harmoniously as one system and as continuous lines and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single corporation.

(17) They aver that the said lines of railroad and all other property of said Oregon Short Line and Utah Northern Railway Company were sold under decrees of the circuit courts of the United States for the districts of Utah, Wyoming, Idaho, and Montana, foreclosing mortgages thereon on or about the 9th day of January, 1897, and that the purchasers at such sale caused to be incorporated the defendant Oregon Short Line Railroad Company, and conveyed to it the railroads and prop-

erties so sold. They aver that the said line of railroad extending from Huntington to Portland, Oregon, and all other property of the Oregon Railway and Navigation Company were sold under decrees of the circuit courts of the United States for the district of Oregon, foreclosing mortgages thereon on or about the 9th day of July, 1896, and the purchasers at such sale caused to be incorporated the defendant the Oregon Railroad and Navigation Company and conveyed to it the railroads and properties so sold.

(18) They admit that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia rivers and the Pacific Ocean; and they aver that in the year 1904 the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized; that all its stock was acquired by the Oregon Railroad and Navigation Company and that two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and that said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships—one of 2,317 tons and one of 1,836 tons—between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia rivers.

(19) They deny that the Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan and China or other Asiatic ports. They admit that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navigation Company; and they admit that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland,

Oregon, and Asiatic ports under charter, but they deny that said steamship company has ever owned, or now owns, any steamships or has ever operated, or now operates, any regular line of steamships.

(20) They aver that the said Portland and Asiatic Steamship Company was incorporated and that the ships chartered and operated by it were chartered and operated for the benefit of the traffic of the railroad lines of the Oregon Railroad and Navigation Company, that is to say, to afford an outlet by way of Portland and the Columbia River for the grain and flour grown and milled on the line of the Oregon Railroad and Navigation Company in eastern Oregon and the State of Washington, which otherwise would have moved via the rails of the Northern Pacific Railway Company and Great Northern Railway Company to Puget Sound and the traffic would have been lost to the Oregon Railroad and Navigation Company; and they aver that the operation of the steamships of said Portland and Asiatic Steamship Company has, of itself, been unprofitable and resulted in a large loss to said company every year, except one during the war between Japan and Russia, and that it was inaugurated and is maintained only because, in the judgment of the Oregon Railroad and Navigation Company, the losses sustained in the operation of said steamships are more than compensated by retaining for the rails of the Oregon Railroad and Navigation Company and for the mills and merchants on its lines the grain and flour traffic which otherwise would have moved to Puget Sound and been lost to said company and to them.

(21) They deny that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete, to any considerable or substantial exent, with lines of steamers operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(22) They admit that the Southern Pacific Company was, on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas, and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California and to Portland, Oregon.

(23) They admit that said Southern Pacific Company in 1901 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and between New York and Galveston and between New Orleans and Havana, which connect at New Orleans and Galveston with the rail lines controlled by it.

(24) They aver that the Central Pacific Railroad Company, the corporation formed by the consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and which constructed and formerly operated the said railroad from San Francisco to a connection with the Union Pacific Railroad Company at Ogden, was unable to pay its indebtedness to the Government of the United States, arising from the issue to it of government bonds as aforesaid at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its own bonds, aggregating a large amount, as such indebtedness, matured during and prior to the year 1899; that the "Central Pacific Railway Company" was organized under and by virtue of the laws of the State of Utah, and acquired by purchase from the said consolidated Central Pacific Railroad Company, on or about the 29th day of July, 1899, the said railroads so constructed from San Francisco to a connection with the main line of the Union Pacific Railroad Company, at Ogden, Utah, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale and of the Cen-

tral Pacific Railway Company to make such purchase was expressly conferred upon and existed in them, respectively, by the laws of the States of Utah, Nevada, and California.

(25) They aver that such purchase and sale were made for the purpose of paying the indebtedness of said Central Pacific Railroad Company to the United States of America and to the holders of its own bonds; that all such indebtedness was thereby paid and discharged in full; and that the incorporation and organization of the said Central Pacific Railway Company and the said purchase and sale and the payment of all such indebtedness were caused and brought about by the defendant Southern Pacific Company; and that the means for paying and satisfying all such indebtedness were provided and procured by or at the instance of the said Southern Pacific Company.

(26) They admit that on January 1, 1901, said Southern Pacific Company owned, has ever since owned, and still owns 100,500 shares, out of a total of 200,000 shares of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San Francisco and Panama. But they deny that the said line of steamships, with the railroad of the Panama Railroad Company and steamships operating in the Atlantic Ocean, forms a through line between New York and San Francisco via the Isthmus of Panama.

(27) They deny that the said rail lines of the Southern Pacific Company from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to the Pacific coast and points in Colorado and other interior States; and they deny

that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines of said company in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(28) They aver, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connecting lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business, in tonnage and revenue, which defendant Union Pacific

Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company, and the companies formerly owning its lines, always prevented it and them from using or attempting to use the said route via Portland in competition with said Southern Pacific Company upon any business to or from the Pacific coast south of Portland or to or from Asiatic ports.

(29) They deny that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company plying between San Francisco and Portland, and aver that competition between said lines was never practicable.

(30) They deny that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company and the rails of the Southern Pacific Company.

(31) They deny that the lines of railroad of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points, and aver that such competition was never practicable.

(32) They deny that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(33) They admit that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight

years the owner and in control of lines of railroad, as alleged in Subdivision III of the petition, and admit that the lines of the Union Pacific Railroad Company, in connection with the line of the Central Pacific Railway Company, operated by the Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast, and that the lines of the Union Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company have been and are competitive between various points in Kansas, Colorado, and other States.

(34) They admit that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, in the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland to the Mississippi Valley and the East, except the lines of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company in connection with the Union Pacific Railroad until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(35) They have no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, as alleged in the petition, but they deny that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, was of great volume and embraced both passengers and freight.

(36) They admit that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said peti-

tion; but they deny that the lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of these defendants and they admit that the lines of the Chicago, Burlington and Quincy Railroad Company are competitive with the lines owned and operated by the defendant Union Pacific Railroad Company to a limited extent and between certain points.

(37) They deny that traffic between the Pacific coast and Asiatic ports and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it and the lines of said Northern Pacific Railway Company and The Great Northern Railway Company and connections and steamship lines controlled by them.

(38) They admit that the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro on the Pacific Ocean, in the State of California, by way of Los Angeles through the States of California, Nevada and into Utah to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City; but they deny that by said contract or otherwise, there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

(39) They admit that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

(40) Except as herein admitted they deny each and every allegation of subdivision III. of the petition.

IV.

(1) They deny that in the spring of 1901, or at any other time, the defendants Harriman, Schiff, Kahn, Stillman and Union Pacific Railroad Company or any of them conspired to restrain trade and commerce among the several States and between said States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company or any steamship lines, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines in respect to any such commerce; or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition if any there was of said railway systems and steamship lines or other railway systems or steamship lines; or that said defendants, or any of them, ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies; or to place restraint upon any competitive commerce carried on by such companies if any such there was; or to monopolize or attempt to monopolize the same; or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) They admit that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Company, 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate value of $197,839,900 then issued and outstanding; but they deny that the said stock was purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in said petition.

(3) They admit that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) They admit that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Company, 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned, and still owns; but they deny that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in said petition.

(5) They admit that thereafter, when, in 1904, defendant Southern Pacific Company created an issue of preferred stock, which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and they aver that thereafter in 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof, which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of said Southern Pacific Company, exercised its right, and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and it has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of

the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding; but they deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company caused said Southern Pacific Company to issue said preferred stock; and deny that it was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any conspiracy or for any of the purposes or with the intent alleged in said petition.

(6) They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) They deny that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) They admit that at the annual meetings of the stockholders of the Southern Pacific Company held since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company, but they aver that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(9) They admit that since April 3, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(10) They admit that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but they deny that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and they aver that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents and proxies of other stockholders.

(11) They admit that defendant Harriman on the 3d day of April, 1901, became chairman of the executive committee, and on the 26th day of September, 1901, became the president of said Southern Pacific Company and ever since has been and still is such chairman and president.

(12) They admit that the same person is the chief traffic officer, the same person the chief operating officer, and the same person the chief accounting officer of both companies, and that said companies have jointly employed numerous commercial and other agents; but they aver that a very large majority of the agents, officers, and employees of said companies are separate.

(13) They admit that since about the 26th day of August, 1904, the Pacific Mail Steamship Company, the Portland and Asiatic Steamship Company, and the San Francisco and Portland Steamship Company have had the same officers and agents;

but they deny that there ever was any competition between any of said steamship companies or said railroad or steamship lines or that such commerce has been monopolized.

(14) They aver that although the railroad of the Union Pacific Railroad Company and the said Central Pacific Railroad physically formed a continuous line from the Missouri River to the Pacific Ocean, yet almost one half the length of said line, to wit, from Ogden to San Francisco, with many branches, was owned by the Central Pacific Railway Company, and was controlled and operated by the Southern Pacific Company, and no rate for the transportation of passengers or property over the said line between the Missouri River and the Pacific Ocean could be made without the concurrence of both the Union Pacific Railroad Company and the Southern Pacific Company; and the only means by which the Union Pacific Railroad Company could secure control of the said Central Pacific Railroad was to secure control of the said Southern Pacific Company, which owned every share of the stock of said Central Pacific Railway Company. That the lines of railroad now owned by defendant Union Pacific Railroad Company had been greatly improved while in the hands of receivers in the foreclosure proceedings hereinbefore mentioned, and prior to January 1, 1901, it recognized the necessity, in the interest of the public as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved, and put and maintained in condition to handle promptly and efficiently the trans-continental traffic passing over the Union Pacific Railroad, the improvement of the latter, as contemplated, would be

practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring, by improvements, its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets, and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by any interest adverse to defendant Union Pacific Railroad Company, its plans, efforts, and object to improve its line of railroad between Council Bluffs and Ogden, and the substantial object of the aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean, would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of any opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of the lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated and impaired. For the purpose of procuring the improvement of the said Central Pacific Railroad, and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said com-

panies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and without any intent or purpose in any wise to suppress or restrain any competition in interstate or foreign commerce, the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named.

(15) They aver that such acquisition greatly increased and strengthened the credit not only of said Southern Pacific Company, but also of these defendants, and enabled them to procure means for improving the said railroads, and increasing the efficiency of the same in the public interest upon much better terms and more readily than otherwise would have been possible. Immediately after such acquisition of the said stock, the improvement of the lines of the said Central Pacific Railway between Ogden and the Pacific Ocean, as well as the lines of these defendants, was commenced, and ever since has been actively prosecuted, so that between the 1st day of January, 1901, and the 1st day of January, 1908, there has been expended (in addition to ordinary expenditures for maintenance) for betterments and improvements of the line of the said Central Pacific Railway Company between Ogden and San Francisco alone about $24,000,000, being approximately $30,000 per mile; the great "cut-off" across Salt Lake, Utah, has been constructed and completed, the grades and curves have been greatly reduced, and the said line has been shortened about 51 miles. And these defendants aver that such improvements would not and could not have been made, except for the improvement of the credit of both companies resulting from the acquisition by defendant Union Pacific

Railroad Company and Oregon Short Line Railroad Company of the stock of the Southern Pacific Company as aforesaid, thereby securing for the Union Pacific Railroad Company an adequate and permanent outlet and establishing upon uniform standards a continuous line and railroad system from the Missouri River to the Pacific Ocean as contemplated by said acts of Congress.

(16) They aver that the reports of defendant Union Pacific Railroad Company and Southern Pacific Company, returned under oath to the Interstate Commerce Commission for the fiscal year ending June 30, 1901, and for every fiscal year since that date, have shown that a majority of the directors of the Southern Pacific Company were at the same time directors of the Union Pacific Railroad Company; that since the 1st day of July, 1901, the records of said Commission have shown that the same person was chief traffic officer of said Southern Pacific Company and of these defendants; that the purchase in 1901 of 750,000 shares, and in 1902 of 150,000 additional shares of said Southern Pacific Company by Union Pacific Railroad Company and Oregon Short Line Railroad Company became known to said Interstate Commerce Commission and to the public at large soon after said purchases were made; that the fact that said Southern Pacific Company and these defendants had many common officers and agents, and the relations existing between said Southern Pacific Company and these defendants in all their details became known as they occurred to the Interstate Commerce Commission and to the public at large, and have been published constantly throughout the United States not only in the news press, but by advertisements of these defendants and of said Southern Pacific Company, and have never been denied or in any way concealed. They aver that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of said 750,000 shares of the stock of

the Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901, and of said 150,000 shares in 1902, and by the payment of the price therefor at the time of such delivery. That the election of directors of said Southern Pacific Company and the election and appointment of all the officers and agents of said Southern Pacific Company and all other matters and things complained of in the petition herein, so far as they have occurred, were merely the natural and necessary consequences and results of said purchase of the said stock. That the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid by the exercise of subscription rights did not change and has not changed the relative voting strength or position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid. And these defendants aver that by reason of the premises, the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of the acquisition or ownership by either of these defendants of stock of said Southern Pacific Company accrued, if at all, more than three years and more than five years next before the commencement of this suit and is therefore barred by the statutes of the United States in such cases made and provided.

(17) They deny each and every allegation of subdivision IV of the petition respecting any combination or conspiracy between the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, for any of the purposes or

with any of the intents alleged; and deny each and every allegation of said subdivision IV of said petition not herein expressly admitted.

V.

(1) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company, pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, to monopolize, or attempt to monopolize, such trade and commerce, or to suppress any competition; and they deny all the allegations of subdivision V of the petition respecting any conspiracy or combination for that or any other purpose between any of the defendants to this suit.

(2) They admit that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000, but deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

(3) They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition.

(4) They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon

Short Line Railroad Company of $82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of Edward H. Harriman and Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company; and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares.

(5) They admit the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) They admit the commencement thereafter of a suit by said Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce, and The Equitable Trust Company of New York, as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the said courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its co-defendants in said suit; and that as a result of said distribution and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares (being 18.18 per cent) of the capital stock of the Northern Pacific Railway Company, and 216,520 shares (being 17.32 per cent) of the capital stock of The Great Northern Railway Company; and that no doubt as to the right of said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) They aver that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as such sales could be advantageously effected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit, the said Oregon Short Line Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company, which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company at the date of the commencement of this suit also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

(8) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce, and the Equitable Trust Company, of New York, against Northern Securities Company, to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or to monopolize any trade and commerce as in said petition alleged.

(9) They deny each and every allegation of said subdivision V not herein expressly admitted.

VI.

(1) They admit that prior to the year 1902, defendant William A. Clark, together with others, caused to be incorporated the defendant the San Pedro, Los Angeles & Salt Lake Railroad Company, but deny that it was for the purposes alleged in the petition; and refer to the articles of incorporation of said company for the purposes of its incorporation.

(2) They admit that defendants, Harriman and Clark, on or about the 9th day of July, 1902, entered into and executed an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement; but they deny that said agreement was entered into for any of the purposes alleged in subdivision VI of the petition, or for any purpose not set forth or mentioned in said "Exhibit A;" and they aver that the said Harriman in entering into and executing said contract was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) They admit that pursuant to said contract "Exhibit A," other contracts between the said Harriman and the said Clark and between the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but deny that any of such other contracts were of the character or for any of the purposes alleged in said subdivision VI of the petition.

(4) They admit that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between William A. Clark, individually, and as trustee for his associates, and the defendant Edward H. Harriman, as trustee for the defendant Oregon Short Line Railroad Company, and defendant the Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that stock of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with

and is still held by said The Farmers' Loan and Trust Company, as stipulated and provided in and by said contract, "Exhibit B."

(5) They deny each and every allegation of a conspiracy or combination by and between defendants Harriman, Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company and Oregon Short Line Railroad Company, or any of them, for any of the objects or purposes mentioned in subdivision VI of the petition, or for any other purpose; and they deny each and every allegation in subdivision VI of the petition not herein in this subdivision expressly admitted; and they aver the facts to be as follows, viz:

(*a*) The Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved prior to the year 1890 to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put in operation the said line from Salt Lake City via Sandy, Provo, Juab, and Leamington to Milford, Utah, a distance of 221.9 miles, and various branches, all of which are more particularly described as "(Parcel 1)" and "(Parcel 2)" of Article Second in the contract, "Exhibit A," to the petition herein. It had complied with all the laws of the Territory of Utah and the State of Nevada necessary to entitle it to construct said line and had surveyed and located the said line; and under due corporate action it had prepared and filed maps and profiles of the same in the proper land offices in Utah and Nevada to entitle it to, and it had acquired, the right of way for said line across the lands of the United States in a general southwesterly direction from Milford through Utah and across the State of Nevada to the boundary line between the States of Nevada and California. The said maps had been approved under the rules of the Department of the Interior, and the Oregon Short Line and Utah Northern Railway Company had graded and completed the

roadbed of said line ready for the rails from Milford to the boundary line between Utah and Nevada and had practically completed the grading of said line from said boundary line southwesterly to Calientes, Nevada, a distance of about 339 miles from Salt Lake City; and had graded a branch of said line from Calientes to Pioche, Nevada.

(*b*) On account of its inability at that time to procure the money necessary to complete the said line said Oregon Short Line and Utah Northern Railway Company discontinued and suspended the work of constructing said line in 1891. The said company continued in such financial difficulty that on or about the 13th day of October, 1893, all its railroads and other assets were placed in the hands of receivers, who administered the same until the sale thereof under the decrees of the Circuit Courts of the United States for the District of Utah, Wyoming, Montana, and Idaho on or about the 9th day of January, 1897, when they were bought by or for defendant Oregon Short Line Railroad Company as hereinbefore alleged.

(*c*) The defendant Oregon Short Line Railroad Company after its acquisition of the railroads and other assets of the Oregon Short Line and Utah Northern Railway Company upon the foreclosure sale thereof as aforesaid until 1901 was financially unable actively to resume the construction of said line from Milford to Los Angeles; and in its endeavor to provide for the completion of said line of railroad, it conveyed that portion of said line, including the completed grade from Milford to the boundary line between the States of Utah and Nevada, to the "Utah and Pacific Railroad Company," a corporation of the State of Utah, all the capital stock of which was owned by defendant Oregon Short Line Railroad Company, and conveyed that portion of said line from the boundary line between Utah and Nevada to the boundary line between Nevada and California, including the partially constructed grade of the main

line from the Utah boundary line to Calientes, and of the branch line from Calientes to Pioche, to the "Utah, Nevada and California Railroad Company," a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, and own that portion of said line which was to be situated in the State of California, the defendant Oregon Short Line Railroad Company caused to be incorporated and acquired all the capital stock of the "Utah, Nevada and California Railroad Company in California."

(*d*) Early in 1901 said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, aided and assisted by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing, where necessary, the grade which had been constructed as aforesaid from Milford to Calientes and in doing other work necessary in the construction of the said line to Los Angeles.

(*e*) On or about the date when the construction of said line was resumed in 1901 as aforesaid, defendant the San Pedro Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah with power to build or acquire railroads in that State, but it did not acquire, under the laws of Nevada, the right to build or acquire railroads in that State, or acquire the right, under the laws of California, to build or acquire any railroad north or east of Riverside until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said the San Pedro, Los Angeles and Salt Lake Railroad Company

when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company and the companies controlled by it as aforesaid.

(*f*) The said the San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(*g*) The said the San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad.

(*h*) Soon after the incorporation of said the San Pedro, Los Angeles and Salt Lake Railroad Company it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and Pioche, located and constructed by the Oregon Short Line and Utah Northern Railway Company as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company; and to that end said the San Pedro, Los Angeles and Salt Lake Railroad Company ran surveys over the said lines and prepared maps and profiles adopting the same as its own, and attempted to file the same in the local land office of the United States in Nevada for the purpose of securing the right of way, and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to seize and take forcible possession of the same.

(*i*) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the Circuit Court of the United States for the District of Nevada a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company and others, and upon the hearing of said cause, an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant; and said Utah, Nevada and California Railroad Company in a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax title of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada and California Railroad Company and said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company involving the said right of way were finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(*j*) As a result of such decisions, rendered prior to the execution of the contract "Exhibit A" to the petition herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it, established their right to the partially completed railroad and the located line and right of way therefor from Salt Lake City, Utah, to the boundary lines between the States of Nevada and California and were rapidly proceeding with the completion of said line to Los Angeles; while the said the San Pedro, Los Angeles and Salt Lake Railroad Company had in

operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale.

(*k*) And these defendants are informed and believe and upon such information and belief allege, that defendant the San Pedro, Los Angeles and Salt Lake Railroad Company would never have undertaken the construction of a line of railroad from Los Angeles to Salt Lake City, except for its expectation and belief, and the expectation and belief of the defendant Clark that it could acquire without compensation the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford, through Utah and across the State of Nevada to the California boundary line, and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that defendant Oregon Short Line Railroad Company would construct and extend its own line from Milford to Los Angeles, the said the San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles to Salt Lake City, but for the ability to negotiate and execute the contract "Exhibit A" to the petition herein providing for the construction and establishment of such a line under the terms and conditions in said contract set forth.

(6) They deny that the said "Exhibit A" to the petition or that anything done in executing and carrying out the same has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) They deny that the aforesaid act of Congress, approved July 2, 1890, or any other law of the United States was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States respectively; and any act of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters, is in excess of the powers of Congress under the constitution of the United States, and is therefore void.

(8) They aver that although prosecuted diligently after the making of said contract "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and these defendants aver that on the 9th day of July, 1902, when the said agreement was made and entered into, there was not then and from the nature of the work to be done there could not for several years be any competition of any kind between the parties to the said agreement in the transportation of commerce; and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress, approved July 2, 1890.

(9) They aver that the said contract, "Exhibit A," to the petition was made and entered into on the 9th day of July, 1902, and not afterward, and they aver that by reason of the prem-

ises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contracts or for or on account of any of the matters and things alleged in subdivision VI of the petition, accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is, therefore, barred by the statutes of the United States in such cases made and provided, and all right of the petitioner to relief herein is barred by the said statutes.

VII.

(1) These defendants are without any knowledge respecting the purchase of shares of the Atchison, Topeka and Santa Fe Railway Company by defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, and of any conspiracy or combination between the defendants last mentioned for the purchase of such stock or for any other purpose, and of the election of defendants Frick and Rogers as directors of the Atchison, Topeka and Santa Fe Railway Company, and of the reasons for such election.

(2) They admit that during the year 1906 defendant Oregon Short Line Railroad Company purchased $10,000,000 par value of the preferred stock of the Atchison, Topeka and Santa Fe Railway Company, which it still owns, and they aver that neither of these defendants has ever owned any other stock of the Atchison, Topeka and Santa Fe Railway Company; and they also aver that the capital stock of the Atchison, Topeka and Santa Fe Railway Company outstanding at the time of such purchase was, and still is, of the aggregate par value of $216,199,530.

(3) They deny that in the purchase of said stock or otherwise these defendants, or either of them, conspired or combined, or have ever conspired or combined, with the defendants Harri-

man, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, for the purchase of stock of the Atchison, Topeka and Santa Fe Railway Company, or to restrain trade and commerce among the several States and with foreign nations, or to monopolize, or attempt to monopolize, such trade and commerce, or to restrain and prevent competition among any railroad systems, or for any other purpose alleged or mentioned in the petition herein.

(4) They deny that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of defendant Union Pacific Railroad Company and of the Southern Pacific Company, under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(5) They are without knowledge of any agreements between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company respecting the extension or abandonment of the extension of their lines in California, and are without knowledge of the incorporation of the "Northwestern Pacific Railway Company" and of the ownership of its stock.

(6) They deny all the other allegations of subdivision VII of the petition.

VIII.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the

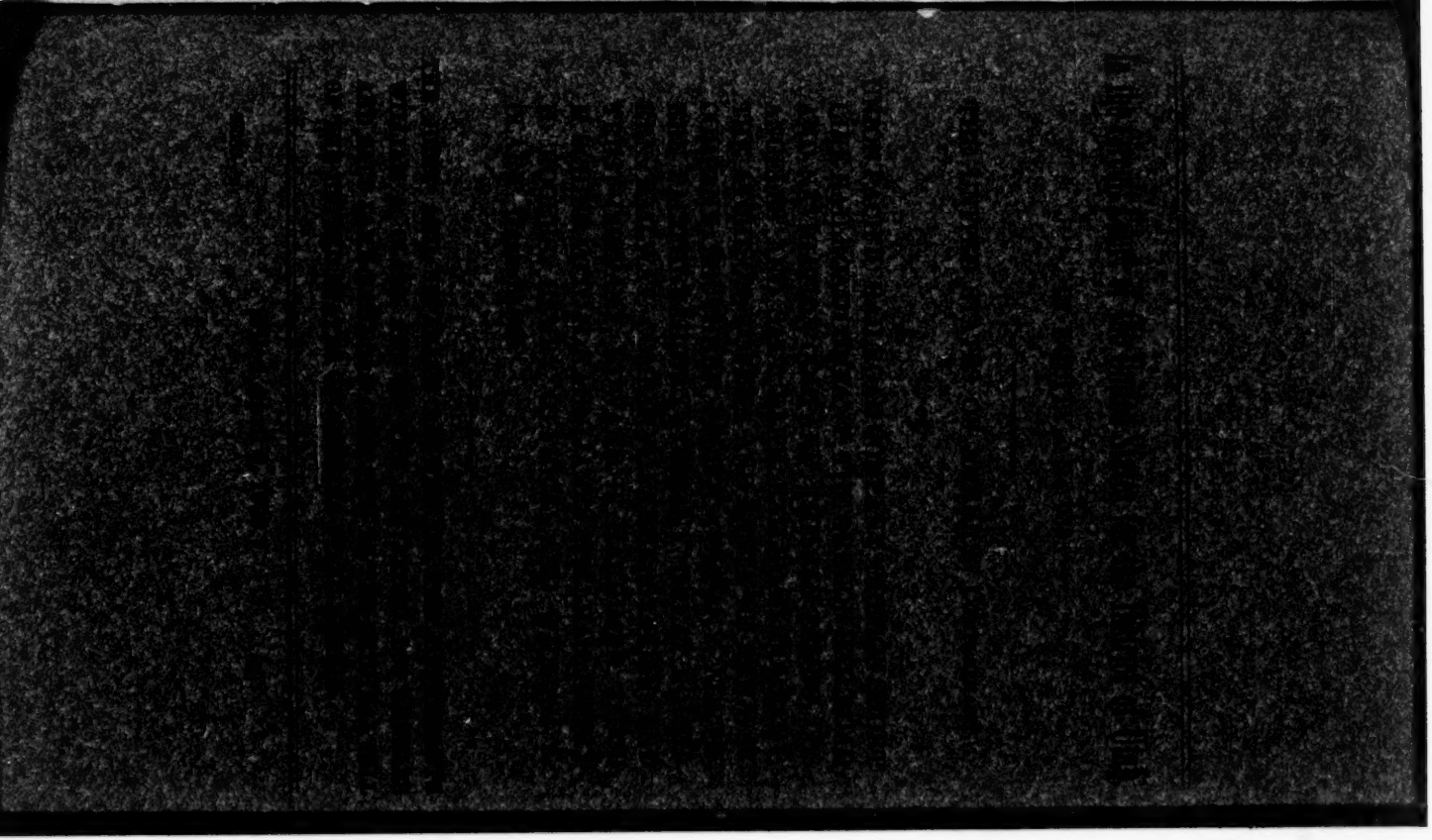
knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

UNION PACIFIC RAILROAD COMPANY,
By JOHN W. BALDWIN,
Its Solicitor.

THE OREGON RAILROAD AND NAVIGATION COMPANY,
By WILLIAM W. COTTON,
Its Solicitor.

OREGON SHORT LINE RAILROAD COMPANY,
By P. L. WILLIAMS,
Its Solicitor.

P. L. WILLIAMS,
ROBERT S. LOVETT,
Of Counsel.



In the Circuit Court of the United States for the District of Utah.

No. 933. In Equity.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark,
Defendants.

THE JOINT AND SEPARATE ANSWER OF THE DEFENDANTS WILLIAM A. CLARK AND OF THE SAN PEDRO, LOS ANGELES

AND SALT LAKE RAILROAD COMPANY, TO THE ORIGINAL BILL OF THE UNITED STATES OF AMERICA FILED HEREIN.

These defendants now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can or may be taken to the errors, uncertainties and other imperfections in the complainant's bill contained or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I.

They admit that the defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company, is now and since about the first day of May, 1905, has been a common carrier engaged in the transportation of freight and passengers within the States of California, Nevada and Utah, and between the termini of its railroad at San Pedro in the State of California and at Salt Lake City, in the State of Utah; and since that time has participated in the transportation of freight and passengers, under joint and through tariffs made effective therefor according to law, over the lines of railroad owned by the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Denver and Rio Grande Railroad Company, and to a limited extent in southern California with the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, and among the several States of the United States into and through which the transportation lines owned and operated by said companies respectively, and not further or otherwise, and to that extent the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, is now and since about May 1st, 1905, has been engaged in trade and commerce among the several States and with foreign nations.

II.

For answer to the second paragraph of complainant's bill, these defendants say that they have no knowledge, information, or belief in respect to said several matters in said second paragraph alleged except the statements and allegations of the complainant contained in said paragraph; wherefore these defendants neither admit nor deny the same, but leave the complainant to make such proof as it may see proper or be advised.

III.

For answer to the third paragraph of complainant's bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, they admit that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company is now the owner of or operates a line of railroad extending from East San Pedro, a port on the Pacific Ocean in the State of California, and thence by way of Los Angeles through the States of California and Nevada and into the State of Utah to the city of Salt Lake in said State of Utah; that the said company is also the owner of certain branch lines of railroad extending from Los Angeles in California to Glendale and Pasadena; that that part of its said line of railroad lying between Riverside Junction and Colton and San Bernardino is used and operated under a lease whereby the right to use the tracks of said Southern Pacific Company between said points is conferred upon defendant, San Pedro, Los Angeles and Salt Lake Railroad Company; and that a portion of the track of the Atchison, Topeka and Santa Fe Railway Company, extending from Colton through San Bernardino and Barstow to Daggett in California, is operated upon by the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a certain lease whereby the joint use of that portion

of the tracks of said Atchison, Topeka and Santa Fe Railway Company is granted for a term of years to the said San Pedro, Los Angeles and Salt Lake Railroad Company. They admit that the remainder of the line of railroad from San Pedro to Salt Lake City aforesaid is owned by the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the entire line constitutes a continuous line of railroad between said points. They admit and aver that the line of railroad of the said San Pedro, Los Angeles and Salt Lake Railroad Company was completed between its said termini on or about the first day of May, 1905, and also admit and aver that it has been at all times since its completion, through its connection with the Oregon Short Line Railroad Company at Salt Lake City and also by and through a connection which it has and maintains with the Denver and Rio Grande Railroad Company at Salt Lake and at Provo in Utah, a competitor with the Southern Pacific Company.

They deny that there is or has been for any reason or by any cause any suppression of competition by any act or thing done or suffered to be done by the said San Pedro, Los Angeles and Salt Lake Railroad Company in its relation to any traffic having origin or destination upon or beyond the lines of railroad owned and operated by the said San Pedro, Los Angeles and Salt Lake Railroad Company or any other traffic.

IV.

For answer to the fourth paragraph of complainant's bill these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said paragraph IV of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

V.

For answer to the fifth paragraph of complainant's bill, these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said paragraph V of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

VI.

For answer to the sixth paragraph of complainant's bill, these defendants aver that prior to the twentieth day of March, 1901, there existed in the State of California a certain railroad corporation known as the Los Angeles Terminal Railway Company, which owned and operated a line of railroad extending from East San Pedro, bordering upon the harbor of San Pedro in California, to Los Angeles, California, with a branch line extending from Los Angeles to Pasadena, and with another branch line extending from a point on the last named branch to a terminus at Verdugo in California, in all about 45 miles of railroad; and

That there also existed a corporation known as the Los Angeles Terminal Land Company, which owned certain lands at and near the terminus of said railroad at San Pedro, California;

That there also existed at the same time a corporation known as the California Improvement Company, the same being a corporation organized under the laws of the State of Illinois, which was the owner of the stocks of the first two mentioned corporations; and

That within a few months prior to said March 20th, 1901,

the stock and interests in said corporations were owned by defendant Clark and certain other persons;

That said persons, owners of the stock of the said several corporations above named, about March 12th, 1901, caused articles of association to be made for the creation of a corporation to be known as the San Pedro, Los Angeles and Salt Lake Railroad Company, which articles of association were duly executed; and on March 20th, 1901, filed in the proper offices in the State of Utah, whereby the said San Pedro, Los Angeles and Salt Lake Railroad Company became on March 20th, 1901, legally incorporated under the laws of the State of Utah;

That in compliance with the laws of the State of Nevada, and to enable it to own and acquire a railroad in the State of Nevada, the said San Pedro, Los Angeles and Salt Lake Railroad Company, on April 8th, 1901, filed its articles of incorporation, duly certified, in the proper offices in the said State of Nevada; and

That on the thirteenth day of April, 1901, in order to comply with the laws of the State of California, the said San Pedro, Los Angeles and Salt Lake Railroad Company filed duly certified copies of its articles of incorporation in the office of the secretary of state of the State of California, and that it filed its articles of incorporation in the county of Los Angeles, in said State, on the fifteenth day of April; in the county of San Bernardino on the tenth day of December, 1901; and in Riverside County in California on the tenth day of April, 1902.

These defendants allege that the purpose of said incorporators, who created the said corporation, was duly expressed by them in the articles of incorporation of said company; and that the corporate powers and the business and purposes of said corporation were duly expressed in the said articles of incorporation, under which the said San Pedro, Los Angeles and Salt Lake Railroad Company, among other things, was given

power "to own and operate a main line of railroad from Salt Lake City in the State of Utah through the following counties in the said State: Salt Lake, Utah, Tooele, Juab, Millard, Beaver, and Iron; also through Lincoln County in Nevada, and also through the counties of San Bernardino, Riverside, Orange, and Los Angeles, in California, to a terminal point on the harbor of San Pedro, in Los Angeles County, California," and it also thereby had power to construct, own, and operate certain branch lines of railroad particularly described in its said articles; and thereby it also had power "to buy, own, maintain, operate, and further extend" the railroad rights, properties, and franchises in the State of Utah, which are so located as to be conveniently appropriated as a part of the main line of its said railroad, or as branch lines thereof; and to purchase like properties in the State of Nevada and the State of California; and particularly to purchase the railroad properties and franchises of the Los Angeles Terminal Railroad Company; and to build and operate certain extensions and branches more particularly described in said articles; and to acquire real estate for the operation of wharves on navigable waters; and also to operate a telegraph line and own and hold water rights, lands, and materials necessary for the purposes of the corporation. It also had power "to purchase or otherwise acquire and own" the capital stock or securities, or any part of the capital stock or securities, of any other railroad corporation or corporations.

These defendants submit that the purpose for which the said San Pedro, Los Angeles and Salt Lake Railroad Company was organized and created is fully and particularly specified and set forth in its said articles of incorporation, reference to which is hereby made and prayed to be considered herein, specifically set forth, and the same will be shown and exhibited upon the hearing of this cause; and

These defendants expressly deny that the alleged purpose

set forth in the first clause of the sixth paragraph of complainant's bill was or is a true statement of the purpose of the said San Pedro, Los Angeles and Salt Lake Railroad Company or of its incorporators, and alleges that its only purpose was that expressed in its said articles of incorporation.

These defendants admit that the said San Pedro, Los Angeles and Salt Lake Railroad Company acquired a line of railway from San Pedro to Los Angeles, which, defendants aver, was by and through a conveyance of the properties of the Los Angeles Terminal Railway Company, which conveyance was delivered to and accepted by the said San Pedro, Los Angeles and Salt Lake Railroad Company on March 21st, 1901, under which the said San Pedro, Los Angeles and Salt Lake Railroad Company became the owner of a line of railroad extending from East San Pedro aforesaid through Los Angeles to Pasadena and Glendale, as above mentioned.

In respect to the allegation of said bill that the defendant, San Pedro, Los Angeles and Salt Lake Railroad Company, was "engaged in the construction of the balance of its line when the defendants, Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole purpose of restraining trade and commerce among the States and with foreign nations and monopolizing same, as hereinbefore more particularly set forth, and of preventing competition between said railways then in process of construction; and the said Union Pacific Railroad System, including said Southern Pacific System, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same; put large gangs of men at work to interfere with and prevent construction of the said line; threatened said Clark and his associates in the said San Pedro, Los Angeles and Salt Lake Railroad Company that if said line was completed the same would be paralleled

by the Oregon Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigation, and other interference were continued for a period of many months;" these defendants deny the said several allegations and each of them, and aver the truth to be, in respect of said several allegations, that a controversy did arise about April 1st, 1901, between the said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company, and one of its auxiliary and subsidiary companies known as the Utah, California and Nevada Railroad Company. The said controversies were with respect to the conflicting rights and claims of said companies to a certain right of way for a railroad, extending from the eastern boundary of the State of Nevada, beginning at a point known as Uvada, in Lincoln County, in said State; thence in a southwesterly course across the State of Nevada to the southwestern boundary thereof; and also a branch line of the railroad right of way, extending from a point upon the line above described, designated and known as Clover Valley Junction, said point being distant about forty miles southwesterly from said Uvada, the point of beginning of the above-described line, and extending thence in a northerly or northwesterly direction to the town of Pioche in Lincoln County in the said State, a distance of about thirty miles.

The contention and claim of the said Oregon Short Line and its said auxiliary company was based upon and grew out of a certain law in the United States entitled, "An act granting to railroads the right of way across the public land of the United States," approved March 3d, 1875, the title and claim of the said Short Line Company being substantially as follows:

The Nevada Pacific Railway Company was a corporation created in the year 1889, existing under the laws of the State of Nevada, and its franchise authorized it to construct a rail-

road connecting with the railroad of the Utah Central Railway Company's railroad at a point on the eastern boundary of the State of Nevada, now known as Uvada, near Pioche in Lincoln County, Nevada, and extending thence in a southwesterly course across the said State of Nevada to the western boundary line of the said State, with two branch lines thence extending into the counties of White Pine and Nye.

That on the twenty-seventh day of July, 1889, the said Nevada Pacific Railway Company, together with the Oregon Short Line Railroad Company, the Utah and Northern Railway Company, and other railroad corporations of the States of Utah, Idaho, and of the United States, pursuant to lawful authority, made and entered into certain articles of consolidation and agreements, whereby said several corporations agreed to and with each other to unite and consolidate and to unite, form, and consolidate their respective organizations, capital stock, railroads, and franchises of every nature and description into one company, to continue in existence for a period of fifty years, and to be called and known as "Oregon Short Line and Utah Northern Railway Company."

For a more particular and complete statement of the terms and conditions of the said articles of consolidation, reference is hereby made to the same, which will be exhibited to this honorable court in due course.

That in the years 1889 and 1890, said Oregon Short Line and Utah Northern Railway Company resolved to construct its railroad upon its right of way from Milford, in the State of Utah, to a point now known as Uvada, on said line, and thence into Lincoln County, Nevada, upon the line authorized under the charter privileges prior to the execution of said agreement of consolidation and owned and enjoyed by the said Nevada Pacific Railway Company.

That in pursuance of said determination, the said Oregon Short Line and Utah Northern Railway Company adopted its line of railroad and located the same, caused a copy of its

articles of incorporation and due proof of its organization under the same, and maps and profiles showing its line of railroad as located and adopted by it to be filed with the local land offices of the United States in Nevada and Utah and to be forwarded therefrom to the Secretary of the Interior, and also caused maps and profiles of the line of its railroad from Milford, Utah, to the Utah-Nevada State line at the point now known as Uvada, and also from the said last named point southwesterly, through the State of Nevada, to the southwestern boundary thereof, and also extending from a point upon said line then known as and called Clover Valley Junction, but now Caliente, and extending thence in a northerly or northwesterly direction to the town of Pioche in Lincoln County, in the said State, a distance of about thirty miles, to be duly prepared and submitted to the proper officers of the Land Department of the United States, and thereupon said maps and profiles were by said officers and by the Secretary of the Interior of the United States, duly approved, all in conformity with the terms and provisions of the aforesaid act of Congress of the United States and pursuant to the regulations and requirements of the Secretary of the Interior of the United States; and that thereby the said Oregon Short Line and Utah Northern Railway Company claimed to have become fully possessed of the ownership of the said railway shown and indicated upon said maps and profiles between the eastern boundary of the State of Nevada and southwesterly boundary of the said State, and also upon said branch line from Clover Valley Junction to Pioche aforesaid and shown upon said maps and profiles of said railroad and as approved by the Secretary of the Interior of the United States.

That the right, title and interest so acquired by the said Oregon Short Line and Utah Northern Railway Company had not been forfeited by the United States or by any act of Congress thereof, nor by any proceedings under the direction of Secretary of the Interior or by *quo warranto* nor any other pro-

ceeding whatsoever, nor in any way or manner; but the same was claimed as a valid subsisting vested right, title and ownership in the said right of way, and the grade thereon constructed by said Oregon Short Line and Utah Northern Railway Company and its assigns;

That during the year 1890 the said Oregon Short Line and Utah Northern Railway Company entered upon the construction of its said line of railway from Milford in the State of Utah to the Nevada State line, and from said State line into and through Lincoln County, Nevada, including the said branch line from Clover Valley Junction to Pioche, and expended in constructing the roadbed and embankments, including bridges, tunnels and work within and upon said right of way, in all about the sum of one million dollars, of which sum about six hundred and ninety thousand dollars was expended upon that portion of the right of way in Lincoln County, Nevada, in the construction of grade, embankments, cuts, tunnels and work in and upon said right of way from Uvada aforesaid southwesterly along the main line of said railway to Clover Valley Junction, a distance of about forty miles, and from said last named point northerly or northwesterly upon said branch line to or near the said town of Pioche, a distance of about thirty miles;

That in the year 1891, after expending said sums of money, the said Oregon Short Line and Utah Northern Railway Company became embarrassed financially and was unable to prosecute said work to completion, and for said reason suspended the prosecution of said work;

That all the properties of the Oregon Short Line and Utah Northern Railway Company, including the properties above mentioned and described, about August 1st, 1889, were mortgaged by the said Oregon Short Line and Utah Northern Railway Company to the American Loan and Trust Company of Boston;

That in the year 1895 the said company, being in default in the payment of its indebtedness secured by said mortgage and other mortgages upon its property, the American Loan and Trust Company, trustee of the said consolidated mortgage, brought its bill to foreclose the same in the Circuit Courts of the United States; and thereafter in said suit such proceedings were had that a decree of foreclosure and sale was duly entered thereon, and the said property embraced in the said mortgage was duly sold by proceedings under said decree of foreclosure, and thereafter duly conveyed to the Oregon Short Line Railroad Company by the master, under the terms and directions of said decree; and that in making execution and delivery of the conveyance of said properties the said Oregon Short Line and Utah Northern Railway Company duly joined, and the purchaser at said foreclosure sale was duly let into the possession thereof, under the terms of said decree of foreclosure and sale, on or about March 15th, 1897.

The said Oregon Short Line Railroad Company, the purchaser of the property of the said Oregon Short Line and Utah Northern Railway Company, was a corporation of the State of Utah, organized as such on the ninth day of February, 1897, and had power to acquire, own, operate, enjoy, maintain, and further extend all of the lines of the railroad right of way and property formerly owned and enjoyed by the said Oregon Short Line and Utah Northern Railway Company.

That in the year 1896, pending the foreclosure proceedings above mentioned, there was formed in the State of Utah a corporation known as the Utah and California Railway Company, which had power by its original articles of incorporation to construct, own, and operate a railroad from Salt Lake City, in the State of Utah, to St. George, in the State of Utah; and that by an amendment to the said articles the said company was empowered to construct a branch line from a point at or near Milford, Beaver County, Utah, a station on the Oregon Short

Line and Utah Northern Railway Company, as then constructed, and continuing to the Utah-Nevada state line at a point now known as Uvada.

Said Utah and California company caused maps of its proposed railroad to be prepared and submitted to the proper land officers of the United States for its line of railroad, as shown upon said maps, extending from Milford station to Uvada in the State of Utah, which said line of its railroad was identical with the constructed roadbed and right of way line of said Oregon Short Line and Utah Northern Railway Company; and

The said Utah and California company caused to be prepared maps and profiles of a proposed railroad line extending from the boundary line between the said States of Utah and Nevada from Uvada into and through Lincoln County, in the State of Nevada, for a distance of about forty miles to a point known and called Clover Valley Junction; and also northerly from said point for a distance of about thirty miles to Pioche, which said maps and profiles were for a right of way identical with and laid upon the right of way and railroad grade and embankments and embraced in the maps and profiles and right of way of said Oregon Short Line and Utah Northern Railway Company hereinbefore described; and it caused said maps and profiles covering the said line within the State of Nevada to be deposited with the said land office of the United States for the district of Nevada for approval by the Secretary of the Interior.

That none of the said maps and profiles so filed by the Utah and California Railway Company over the said line within the States of Utah and Nevada were ever approved by the Secretary of the Interior; and that no title to the said right of way shown upon such maps was ever acquired by the Utah and California Railway Company.

That the said articles of incorporation and corporation

franchise of the said Utah and California Company did not at the time aforesaid embrace any right, franchise or power to construct, maintain or operate a railroad for any distance whatsoever or at all within the State of Nevada;

And the said Utah and California Railway Company had not at the time of making and depositing its said maps and profiles upon the said line in the State of Nevada any right, franchise or power whatsoever under which it could make, construct or operate a railroad in the State of Nevada, nor under which it could, according to the laws of the said State of Nevada, acquire any right to construct, maintain, and operate a railroad in said State.

That in the year 1898 the Oregon Short Line Railroad Company made a certain agreement with one McCune and his associates providing that they should organize a company to be known as Utah and Pacific Railroad Company, to build, construct, maintain, and operate a railroad from Milford station on the line of the said Oregon Short Line Railroad Company in Beaver County, Utah, to Uvada on the Nevada State line.

In said agreement the Short Line Company reserved to itself the option to purchase and take over from said McCune and others the majority of the capital stock and securities of the said Utah and Pacific Company.

That pursuant to said agreement a corporation of the State of Utah was organized by the name last aforesaid, and the line of the railroad from Milford to Uvada was by it constructed.

That the Utah and California Railway Company waived its pretended rights under its said filing of maps and profiles in favor of the said Utah and Pacific Railroad Company, and consented that the Utah and Pacific Railroad Company should construct, maintain, and operate its railroad upon said right of way; and

The said Oregon Short Line and Utah Northern Railway

Company and said Oregon Short Line Railroad Company assigned and transferred their rights to said right of way and railroad grade between said points to said Utah and Pacific Railroad Company, and the said railroad of the Utah and Pacific Railroad Company was constructed and operated from Milford to Uvada aforesaid upon a right of way duly approved to it by the United States and identical with the original right of way approved by the United States to said Oregon Short Line and Utah Northern Railway Company.

That said Oregon Short Line Railroad Company acquired all the stock, bonds and securities of said Utah and Pacific Railroad Company and was possessed thereof and operated said railroad to Uvada as aforesaid.

That at the time said controversies arose the line of the railroad of the Oregon Short Line Railroad Company operated by it, including the said Utah and Pacific Company, extended from Salt Lake City in the State of Utah continuously to said Uvada, a distance of 297 miles, and at Uvada connected with the railway right of way formerly owned by the Oregon Short Line and Utah Northern Railway Company and extended into and through Lincoln County, Nevada, and it was engaged in collecting material for and in preparation for continuing the construction of a railroad upon the said line of right of way into and through Lincoln County, Nevada, including said branch line to Pioche.

On the second day of February, 1898, the Utah, Nevada and California Railroad Company was organized in and under the laws of the State of Nevada as an auxiliary company of the Oregon Short Line Railroad Company for the purpose of constructing a railroad from the eastern boundary of the State of Nevada, from a point near Uvada aforesaid, southwesterly across the State of Nevada to the southwestern boundary of said State, with a branch line extending from a point on the aforesaid main line of railroad, called Clover Valley Junction, and about forty miles southwesterly from the said boundary

line between the State of Utah and Nevada, and extending thence in a northerly and northwesterly direction a distance of about thirty miles to the town of Pioche in Lincoln County, Nevada, and for the purpose of utilizing, using and occupying the line of right of way and railroad grade of the said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to, but to so occupy the same with the consent of the Oregon Short Line and Utah Northern Railway Company aforesaid, and its assignee, the Oregon Short Line Railroad Company.

That all of the capital stock of said Utah, Nevada and California Railroad Company was owned by said Oregon Short Line Railroad Company.

That after its organization the said Utah, Nevada and California Railroad Company duly adopted and located its line of railroad and caused to be prepared maps and profiles of its said line of railroad, showing the line thereof across the public lands of the United States from Uvada to Clover Valley Junction, a distance of about forty miles, the same being identical with the line of right of way of said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to; and caused its said maps and profiles, together with copies of its articles of association and due proofs of its organization, to be deposited in the proper land office in the State of Nevada under and as required by the regulations and requirements of the Department of the Interior prescribed under and by virtue of the Act of Congress aforesaid; that by reason of the apparent conflict of location and claims of said several companies indicated in said several sets of maps, the Department of the Interior required a hearing to be had before the said local land office in Carson City, Nevada, to determine the rights of said Utah, Nevada and California Railroad Company and of the Oregon Short Line and Utah Northern Railway Company, and the said Utah and California Railway Company, in respect to said location and right of way; that a hearing was had in

said local land office pursuant to the direction of the Secretary of the Interior, but said local land office erroneously and wrongfully held that the grant to and right of way of the said Oregon Short Line and Utah Northern Railway Company under its said approved maps and location were forfeited because said line was not built within five years, and erroneously recommended that the maps and location of the said Utah and California Railway Company should be approved. Afterwards, on the twenty-fourth day of April, 1901, the Land Commissioner of the General Land Office, having before him by proper proceedings the record and testimony and the findings and recommendations of the local land office, did correct said error made by the local land office and recommended to the Secretary of the Interior that the said maps and profiles of said Utah and California Railway Company be disapproved, and the maps and profiles and "due proofs" presented by the said Utah, Nevada and California Railroad Company were approved by the Secretary of the Interior of the United States on the twenty-fifth day of April, 1901.

That the said Utah and California Railway Company, after the filing of its said maps and due proofs as aforesaid, and on December 28th, 1900, at a meeting of its stockholders amended its articles of association so as to create a right, power and franchise for it to build, construct, maintain, and operate a railroad in the State of Nevada, but did not file its said amended articles of association in the State of Nevada until the eighth day of April, 1901.

That about the first day of April, 1901, by reason of the failure of the Oregon Short Line Railroad Company to build and complete the said railroad within five years from the date of the approval of the said maps and profiles first filed by the Oregon Short Line and Utah Northern Railway Company as aforesaid, and because of the approval of the maps and profiles of the Utah and California Railway Company by the local land office, and because of refusal of the approval by the

local land office of the maps, profiles and due proofs, theretofore filed by said Utah, Nevada and California Railroad Company, the said San Pedro, Los Angeles and Salt Lake Railroad Company, having at that time obtained the consent of the Utah and California Railway Company and control of said company by ownership of its stock, was advised that the said line of right of way was owned by it and lawfully appropriated by said Utah and California Railway Company and its assigns, undertook to enter upon the said right of way, grade, roadbed, tunnels, and improvements made and constructed as aforesaid, and to take hold and appropriate the same under its supposed rights under the Utah and California Railway Company and under its own charter, and that thereupon the Utah, Nevada and California Railroad Company being engaged in the construction of its line of railroad southwesterly from Uvada, a direct conflict arose between the agents and servants of the respective companies.

That in order to quiet the same and to settle the rights and interests of the respective claimants to said right of way, a suit was brought in the Circuit Court of the United States for the District of Nevada by the Utah, Nevada and California Railroad Company against the Utah and California Railway Company, the Empire Construction Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelley, H. B. Maxson, in which suit the complainant alleged the facts hereinbefore set out; that in said suit the complainant therein, the Utah, Nevada & California Railroad Company afterwards filed a supplemental bill alleging that the Utah & California Railway Company had made some sort of contract or agreement whereby it conveyed or agreed to convey to the said San Pedro company, some right, title, estate, or interest in and to the said railroad grade and roadbed hereinbefore described. It also alleged in said supplemental bill the filing by it of maps, profiles and due proofs for its branch line extending from Clover

Valley Junction to the town of Pioche, in the State of Nevada; also the surveying and adoption of its line of railroad from Clover Valley Junction southwesterly across the State of Nevada to the western boundary thereof, and that it had caused maps and profiles of its line of right of way, as adopted by it for that part of its proposed line southwesterly from Clover Valley Junction across the State of Nevada to the western boundary of said State, to be submitted to the Secretary of the Interior for his approval; that it had duly adopted the line of right of way described upon and embraced in said maps by due corporate action by its board of directors, and that it had continuously prosecuted the work of construction of its railroad upon the line of railroad right of way indicated and shown upon its said several maps and profiles, and that it then had in operation twenty-three miles of railroad in and upon its said main line of right of way from the Utah-Nevada state line in the direction and towards Clover Valley Junction aforesaid, and that it had on hand track material and was actively and earnestly prosecuting the work of construction of said line of railroad through Clover Valley Junction and towards the western boundary of the State. It alleged the entry upon its line of railroad by the said San Pedro, Los Angeles and Salt Lake Railroad Company and the attempted location of a right of way for the benefit of the said San Pedro, Los Angeles and Salt Lake Railroad Company, and alleged its claim to right and title to the entire line of right of way and the interference therewith from Uvada westward by the agents and servants of the said San Pedro, Los Angeles and Salt Lake Railroad Company, and alleged and claimed title to the whole of the said line of right of way, and prayed that the claim of right and title asserted by the said San Pedro, Los Angeles and Salt Lake Railroad Company thereto be quieted and its possession and right of possession be confirmed to it.

That in said suit answers were filed by the defendants in said suit, including the said San Pedro, Los Angeles and Salt

Lake Railroad Company, and that a temporary injunction was issued and allowed under the said original bill.

In said suit the said San Pedro, Los Angeles, and Salt Lake Railroad Company filed its answer and cross bill to the said original and said amended and supplemental bills, and denied either upon information or directly the allegations thereof, and claimed that it had the right to enter in and upon and to appropriate all the premises claimed by the complainant in said suit, and by way of cross complaint in said proceedings alleged and set out its claim to all of that part of the line of right of way for a railroad commencing at Clover Valley Junction, extending thence in a southwesterly direction through the Meadow Valley Wash to the Nevada-California State line, a distance of about one hundred and seventy-five miles, and alleged the adoption by it of its line of right of way for its railroad, the filing by it of copies of its articles of association, due proofs, maps, and profiles, as required by the laws of the United States; denied the said complainant's adoption, location, or filing of maps and profiles as to different portions of said line, and attacked the method of survey, location and adoption of route which had been made by the complainant, and charged that the said complainant's supposed line was not validly made, adopted, located, or proven; that on June 10th, 1901, it had commenced at Salt Lake City the survey and location of a part of its line from Salt Lake City by the most feasible and direct route through said State of Utah and into the State of Nevada to a point of connection with its said line of railroad surveyed, located, and adopted in the State of Nevada, and then had about eighty miles of said line surveyed and adopted; alleged that it had entered upon and taken possession of all of the railroad right of way from Clover Valley Junction to the Nevada-California State line, and that on May 6th it commenced the work of construction of its railroad upon said line, and that at a point about twenty-six miles southwesterly from Clover Valley

Junction it had entered upon and commenced construction of its railroad line upon said disputed right of way, and alleged its purpose to continue to use and occupy said disputed right of way as the location for its line of railroad; that it was then engaged in surveying and locating a line for its railroad from the city of Los Angeles, in the State of California, to the Nevada-California State line; that it then had acquired and had in operation its railroad from San Pedro to the city of Los Angeles, a distance of 27 miles, and had acquired a system of railroads in the city of Los Angeles and extending into the surrounding country, consisting of three branch lines of standard-gauge railroad, aggregating in all about eighty miles of track; that it had expended in addition to the amount expended in acquiring the Los Angeles Terminal Railway's property, about five hundred thousand dollars; that it purchased rails for sixty miles of track, a large number of ties, was rebuilding its railroad between San Pedro Harbor and Los Angeles; that it had purchased from private owners nearly all the right of way for the first sixty miles of its railroad easterly from Los Angeles, and was engaged in securing the remainder right of way, and that it proposed to continue the same; that when the right of way was secured, contracts for the grading of the first sixty miles of its line would at once be let and the railroad constructed thereon. It recited the purchase of equipment and preparations for construction; alleged that the complainant on July 29th had entered at Clover Valley Junction upon the said disputed right of way formerly owned by the Oregon Short line and Utah Northern Railway Company, and forcibly took possession thereof and threatened to proceed along the said disputed right of way in the construction of its own railroad. By said cross bill the said San Pedro, Los Angeles, and Salt Lake Railroad Company prayed amongst other things for the settlement of the title to the disputed right of way, and that the complainant in said suit and all per-

sons under them be enjoined from interfering with or occupying the said disputed right of way, and that the title thereof be declared to be in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the title of the complainant, the Utah, Nevada and California Railroad Company, be quieted in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and for relief by which the complainant would be excluded from any further right, title, or claim therein.

The case was heard upon the issues as made up under the original bill, the supplemental bill, the cross bill, and the respective motions for injunction before the Honorable Thomas P. Hawley, judge of the said United States circuit court, on the 22d day of July, 1901, and the said complainants in the said original bill were granted an injunction restraining the Utah and California Railway Company and the said San Pedro, Los Angeles and Salt Lake Railroad Company from interference with the line of right of way and railroad roadbed and grade from Uvada to Clover Valley Junction and thence to Pioche, and the court denied the prayer of the complainant for an injunction *pendente lite*, under its amended and supplemental bill, as to that portion of the line of right of way for a railroad southwesterly from Clover Valley Junction, and as the respective claims of the parties in respect thereto were yet pending before the Land Department of the United States, left the decision of questions as to such rights to be further considered after the completion of the respective hearings in said Land Department of the United States.

That the complainant in said suit, the Utah, Nevada and California Railroad Company, completed its line of railroad to Clover Valley Junction on or about the first day of August, 1901, and there was in operation by it and the Oregon Short Line Railroad Company at that time southwardly from Salt

Lake by direct line about three hundred and twenty-four miles of railroad.

These defendants allege that after the said decision of the United States court for the district of Nevada, the complainant in said suit, and the said San Pedro, Los Angeles and Salt Lake Railroad Company each, by their separate corps of surveyors, surveyed and studied the country known as the Meadow Valley Wash, the then only known practicable route for a railroad southwesterly from Caliente, Nevada, for a distance of about one hundred and twenty-five miles, and which consists of a canyon carrying a mountain stream, the difficulties of railroad construction through which for even one line of railroad are, from a physical standpoint, very great; and thence across the desert to a junction with the line of railroad of the Atchison, Topeka and Santa Fe Railway Company; that along the entire line of railroad through said Meadow Valley Wash and to a junction with the railroad of the Santa Fe Company there were almost no agricultural, live-stock, or mining interests or development, practically no local settlement, either actual or prospective, and the line of railroad between said points was through a canyon or a desert without any substantial showing for even a prospective local business.

These defendants deny that they or either of them were at any time or in any manner or for any reason whatever induced to or did desist from and abandon their proposed intention of building a line of railroad such as was described and defined in the articles of association of the said San Pedro, Los Angeles and Salt Lake Railroad Company. They deny that the said Harriman and his associates and the said Oregon Short Line Railroad Company on the one part, and defendant Clark and his associates upon the other part, then or at any time, combined and confederated together to suppress any competition either actual or proposed. They deny that the said Clark and his associates upon the one part or the said

Harriman and his associates and the said Oregon Short Line Railroad Company then or at any time made or entered into any contract, agreement, or combination to in any manner maintain, continue or extend the, or any, alleged restraint of trade mentioned in complainant's bill, or to maintain, continue, or extend any, or the alleged monopoly. They deny that the said William A. Clark, joined in the alleged or any conspiracy to suppress competition in any or all of the territory set forth or described in the complainant's bill, and deny that in pursuance of such alleged or any unlawful alliance with said, or any of said, alleged conspirators the said Clark entered into a certain agreement with the defendant Harriman under date of July 9th, 1902. They admit that the defendant Clark and the said Harriman did make a certain agreement, dated July 9th, 1902, and they admit that a copy thereof is annexed to the said complainant's bill, marked Exbibit "A." These defendants allege and aver that there was not at the time of the making of said agreement any continuous line of railroad extending from Salt Lake City in Utah to San Pedro via Los Angeles. They allege the truth to be that the only railroad constructed at that time was the railroad owned by the Oregon Short Line Railroad Company and its auxiliary company, the Utah, Nevada and California Railroad Company, which extended southerly from Salt Lake by direct line for a distance of about three hundred and twenty-four miles; that the said Short Line Company also owned and operated other branch lines of railroad south of Salt Lake City, including a cut-off then being constructed and known as the Leamington Cut-off, extending southerly from Salt Lake City through Stockton to Leamington Junction for a distance of about 200 miles, making in all a constructed line of railroad and branch lines owned and operated by the said Short Line Company, south of Salt Lake City, of about 525 miles; that the said San Pedro, Los Angeles and Salt Lake Railroad Company at that time owned in southern California

a line of railroad with branches aggregating about eighty miles of constructed road, and was engaged in securing rights of way for the construction of its line of railroad and in constructing a road thereon from Los Angeles to Riverside, and that the amount of railroad thus under construction amounted to about sixty miles. It also claimed to have located a line for a right of way across government land extending from Caliente to a junction with the Atchison, Topeka and Santa Fe Railway Company's line of railroad for about 300 miles, the title to which was in dispute.

These defendants allege and aver that the said San Pedro, Los Angeles and Salt Lake Railroad Company had not acquired nor located its line of railroad between said junction with the Santa Fe Railroad tracks and San Bernardino and Riverside, California. That the route from Daggett, the junction point with the Santa Fe Railroad aforesaid, passed over a range of mountains over the Cajon pass for a distance of about eighty miles which called for the crossing of a mountain of steep grades, and which required very heavy expensive construction work, and it had not acquired any right of way nor made any certain and definite plans for the construction of its line of road from San Bernardino to Riverside, California, nor yet between said Riverside and the said junction of the Santa Fe Railroad aforesaid.

The said San Pedro, Los Angeles and Salt Lake Railroad Company had failed to secure to itself the right and title to the line of right of way for a railroad, including the roadbed built thereon originally by the Oregon Short Line and Utah Northern Railway Company, and the right to the location of its entire line of railroad from Caliente southwesterly to a junction with the Santa Fe tracks as aforesaid, was in dispute in the Land Department of the United States; and the said San Pedro, Los Angeles and Salt Lake Railroad Company was advised that its right to recover in said proceedings was in grave doubt.

The premises and nature of the country considered, it had

become apparent to the said San Pedro, Los Angeles and Salt Lake Railroad Company that for the entire distance from Caliente to a junction with the line of railroad of the Atchison, Topeka and Santa Fe Railway there was not then and apparently never could be any considerable or profitable amount of local business, and that the line of railroad from Caliente northward existed in a country which promised much valuable local business between Salt Lake and Caliente; that the line of railroad owned and then being constructed by the said San Pedro, Los Angeles and Salt Lake Railroad Company in California promised a lucrative business locally in southern California, and that if said California line was connected with the lines of railroad extending from Caliente northerly to Salt Lake and to connections with railroads existing at Salt Lake and extending eastwardly to the Missouri River, namely the Oregon Short Line and its connection, the Union Pacific Railroad, the Denver and Rio Grande Railroad and its connections to the Missouri River, a line of railroad constituting a new through transportation line from the Missouri River through Salt Lake to Los Angeles could successfully, and with some reasonable chance for profit, be constructed, maintained and operated, and that the construction, maintenance, and operation of two such lines of railroad from southern California to Salt Lake would be unprofitable and nonremunerative to both of such lines.

That upon the consideration of the circumstances and conditions above recited, the contract and agreement of July 9, 1902, was made, executed and entered into, and these defendants allege that the said contract and agreement did not create any combination, confederacy or conspiracy with the intention of or with the effect of suppressing competition, and was not made with the intention of restraining trade and did not have the effect of restraining trade, and was not intended to create or provide for a monopoly and did not cause or create any monopoly whatever.

And these defendants admit and aver that after the making of said contract of July 9th, 1902, and pursuant thereto, the Oregon Short Line Railroad Company and its auxiliary companies made, executed, and delivered to the said San Pedro, Los Angeles and Salt Lake Railroad Company deeds and conveyances conveying to it those certain lines of railroad then commonly known as the Garfield Branch, the Leamington Cut-off, the lines of railroad of the Oregon Short Line Railroad Company lying south of Sandy to Milford, including the branch line to Frisco, the so-called Tintic branches, the line of the Utah and Pacific Railroad Company extending from Milford to Uvada, the constructed line of railroad of the Utah, Nevada and California Railroad Company extending from Uvada to Caliente, Nevada, the partially completed roadbed constructed upon the right of way for a railroad from Caliente to Pioche, Nevada, and assigned and caused to be assigned and conveyed to said San Pedro, Los Angeles and Salt Lake Railroad Company all of the right, title, and interest of the said Oregon Short Line Railroad Company and of the Utah, Nevada and California Railroad Company in and to the located line for a right of way for a railroad extending from Caliente southerly and southwesterly through the Meadow Valley Wash to the Nevada-California State line, and also sold and delivered to the said San Pedro, Los Angeles and Salt Lake Railroad Company a large amount of equipment and railroad material situated upon and along the said lines of constructed railroad above mentioned from Salt Lake City and from Sandy southerly to Caliente, embracing in all 523 miles of constructed and completed railroad and the franchises thereof.

These defendants also admit and aver that pursuant to said agreement the Oregon Short Line Railroad Company granted to the said San Pedro, Los Angeles and Salt Lake Railroad Company joint and equal use of the yards and terminal facilities of the Oregon Short Line Railroad Company at Salt Lake City.

These defendants also admit and aver that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Southern Pacific Company the said Southern Pacific Company granted to it the right to use jointly and equally with the Southern Pacific Company certain railroad tracks of the Southern Pacific Company extending from Riverside Junction to Colton and thence to San Bernardino, in southern California, which were secured to the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a definite lease embracing the tracks lastly above mentioned and specifying the terms and conditions for the operation thereof.

These defendants further admit that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Atchison, Topeka and Santa Fe Railway Company, and upon negotiations between said San Pedro Company and the said Santa Fe Company, the said Santa Fe Company granted to said San Pedro, Los Angeles and Salt Lake Railroad Company the right to the joint use and occupation of certain of the tracks of the said Santa Fe Company extending from Colton in California through San Bernardino and through Barstow to Daggett, for a term of years, to a point upon the line of the said Santa Fe Company, a distance of about 91 miles; and that the tracks obtained by said two leasehold interests from the Santa Fe Company and the said Southern Pacific Company, respectively, are now and after the dates of said respective leases were used by the said San Pedro, Los Angeles and Salt Lake Railroad Company as a part of its new through line of railroad from San Pedro to Salt Lake City.

That because of the making and by carrying out the said several agreements hereinbefore referred to the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company was enabled to complete and open for use its said line of railroad from Salt Lake City to San Pedro via Los Angeles on the first day of May, 1905, and that otherwise it would have been

unable to complete and open its said line of railroad between said points for two or three years thereafter.

That at the time of the making of said agreements, upwards of 400 miles of difficult and expensive construction work remained to be done to connect the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company and those of the Oregon Short Line Railroad Company, Utah, Nevada and California Railroad Company at Caliente, Nevada, and there could not for several years have been any competition of any kind between the parties to said agreement for the transportation of commerce, and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote or contingent to be prohibited by or to come within the provisions of said act of Congress, approved July 2, 1890.

These defendants deny that for the purpose of maintaining, extending, and preserving the or any alleged restraint of trade and commerce among the States and with foreign nations, or monopolizing the same and destroying competition with relation thereto, or for any other unlawful or illegal purpose, or to any unlawful effect, said San Pedro, Los Angeles and Salt Lake Railroad Company made certain or any traffic arrangements or contracts with either the said Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, the defendant Clark and his associates or other persons, but these defendants admit and aver that said San Pedro, Los Angeles and Salt Lake Railroad Company did make a certain agreement with the Southern Pacific Company under date of June 18th, 1903, which is the same agreement referred to in complainants' bill.

These defendants allege and aver that the only tariffs and rates of the Southern Pacific Company which by the terms of said contract the said San Pedro, Los Angeles and Salt Lake Railroad Company was to adopt were the rates and tariffs of the Southern Pacific Company in respect of local southern

California intrastate business as to that part of the lines of said San Pedro, Los Angeles and Salt Lake Railroad Company which extended from San Pedro through Los Angeles to Pasadena, and as to that portion of the new line then under construction by said San Pedro, Los Angeles and Salt Lake Railroad Company which extended easterly from Los Angeles towards Riverside, California, of which no more than thirty miles had at that time been constructed. These defendants aver that the Southern Pacific Company at the time of making said contract and for many years prior thereto had owned and exclusively operated a line of railroad from San Pedro to Los Angeles; that it also owned a line from Los Angeles to Pasadena, and that its main line also extended eastwardly from Los Angeles through Pomona, Ontario, and Riverside, California, and thence to its eastern terminus; and these defendants aver and allege that on the 15th day of April, 1907, long prior to the commencement of this suit, the said agreement between said San Pedro, Los Angeles and Salt Lake Railroad Company and said Southern Pacific Company was by due corporate action by both of these said companies abrogated and canceled.

These defendants, further answering, admit and aver that pursuant to said contract of July 9th, 1902, certain contracts and agreements were made between said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company and which are the same agreements referred to by complainant in paragraph VI of its said bill.

And these defendants admit that in one of said contracts it was among other things provided that the San Pedro, Los Angeles and Salt Lake Railroad Company would not for the term of ninety-nine years build or assist in building any lines of railroad which might run northwardly of the parallel of Salt Lake City, Utah, and that the Oregon Short Line Railroad Company would not construct any lines of railroad

southwardly of the parallel of Salt Lake City, Utah, except by common consent; but these defendants deny that the purpose of said agreement was to maintain, extend, and preserve the, or any, restraint of trade or commerce among the States or with foreign nations, or of monopolizing the same and destroying competition with relation thereto, as alleged in said bill, or in pursuance of any conspiracy in said bill alleged, and that it was competent and proper for these defendants to enter into such arrangements with the Oregon Short Line Railroad Company for the reason, among others, that the San Pedro, Los Angeles and Salt Lake Railroad Company had no corporate power under its said articles of incorporation to construct or build any railroads whatever northward from Salt Lake City, Utah; and that the Oregon Short Line Railroad Company, after selling its said railroads and franchises therefor southward from Sandy and from Salt Lake City, retained no corporate power to build, construct, maintain, or operate railroads south of said Sandy or Salt Lake City as above mentioned.

Answering further, these defendants allege and aver that pursuant to and in carrying out the said contract of July 9, 1902, certain other contracts or agreements referred to in the complainant's bill were made between the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and said San Pedro, Los Angeles and Salt Lake Railroad Company, providing the terms and conditions upon which traffic might be interchanged between the said companies, and providing for the operation of a through line for the carriage of freight and passengers by through cars, through trains, and direct connections; and that amongst other things, upon the conditions in said contract recited, there was reserved to the Union Pacific Railroad Company and to the Oregon Short Line Railroad Company the right to make and establish certain through rates on certain joint business between points reached over the line of said Union Pacific Railroad Company and the Oregon Short Line Railroad Company and points in Utah

upon the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company; but these defendants deny that the effect or purpose of said contract and its several provisions was for the purpose of maintaining, extending and preserving the or any restraint of trade or commerce among the States or with foreign nations, or monopolizing the same or destroying any competition with relation thereto. For a full statement of all the terms and conditions of said contract reference is made hereby to said contract, which is dated the 18th day of June, 1903, and which will be exhibited to the court herein in due course; and these defendants deny that the San Pedro, Los Angeles and Salt Lake Railroad Company thereby in any way or manner or to any extent surrendered the control of said company or the management of its affairs or the control and management of its said railroad and properties to the said Harriman and his associates, or to the said Union Pacific Railroad Company or to the said Oregon Short Line Railroad Company or any or either of them.

These defendants admit that there was issued of the capital stock of said San Pedro, Los Angeles and Salt Lake Railroad Company twenty-five million dollars in par value, and that one-half of the same was issued to and for the defendant Clark and his associates, and that one-half thereof was issued to said Edward H. Harriman as trustee, and that the said capital stock of said company was issued to said parties and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee under an agreement, a copy of which is annexed to complainant's bill, marked Exhibit "B," and made a part thereof.

These defendants deny that each and all or any of the several acts in paragraph VI of complaintant's bill alleged against these defendants were done in whole or in part or in any manner whatever pursuant to the alleged original conspiracy or to any conspiracy whatever to suppress competition or to procure a

monopoly of the transportation business throughout the territory in said bill described, or in any other territory whatever, and deny that any conspiracy for any of said purposes or for any illegal or unlawful purpose existed, or that these defendants in any way or manner at any time joined in the making or maintaining of any conspiracy or the doing of any unlawful act or thing, or that they or either of them in any way or manner at any time united in connection with other persons or corporations in the purpose of accomplishing of any illegal or unlawful design, and deny that the said San Pedro, Los Angeles and Salt Lake Railroad Company was in any way or manner party to any conspiracy, combination or confederacy forbidden by law or in restraint of trade or for the purpose of creating any combination, monopoly or unlawful confederation or conspiracy.

These defendants deny that in pursuance of said alleged or any combination, confederation or conspiracy, or that in fact or in any way or manner the lines of railroad owned and operated by the said San Pedro, Los Angeles and Salt Lake Railroad Company are in all or any respect managed or controlled by the said alleged, or any, conspirators or by any person or persons other than its own proper officers and agents, and these defendants deny that there is not now and that there has not been at all times direct, positive, and active competition between the railroad of said San Pedro, Los Angeles and Salt Lake Railroad Company and the railroad and lines of the Southern Pacific Company or of any other line of railway controlled by said Union Pacific Railroad Company and said Harriman and his associates as in said bill alleged.

They deny that the aforesaid Act of Congress, approved July 2, 1890, or any other law of the United States was intended to or could constitutionally prohibit the making or carrying out of such agreements and contracts, or any of them, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States respectively or by corporations of other States author-

ized by the said States to exercise their corporate powers therein and all agreements relating to the construction or abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and therefore void.

They aver that the said contract "Exhibit A" to the petition was made and entered into on July 2, 1902, and that each and every contract thereafter made and entered into in carrying out and pursuant to the provisions of the same, was made and entered into and was fully executed during the months of June and July, 1903, and not afterwards; and these defendants aver that by reason of the premises, the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contract or for or on account of any of the matters and things alleged in subdivision VI of the petition accrued if at all more than three years and more than five years next before the commencement of this suit, and is therefore barred by the laws of the United States, and all right of the petitioner to relief herein is barred by the said statute and by the laches and acquiescence of the petitioner.

VII.

For answer to the seventh paragraph of complainant's bill, these defendants say that they have no knowledge, information, or belief in respect of the said several matters in said paragraph VII alleged, except the statements and allegations of the complaint itself as contained in said paragraph, wherefore these defendants neither admit nor deny the said several allegations, but leave the complainant to make its proofs therein as it may be advised.

VIII.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD CO.,
By W. A. CLARK, *President.*

Attest:

J. H. ANDERSON,
Assistant Secretary.

W. R. KELLY,
Solicitor and Counsel.

In the Circuit Court of the United States, for the District of Utah.

In equity. No. 939.

THE UNITED STATES OF AMERICA, *Complainant*,

vs.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, *defendants*.

THE SEPARATE ANSWER OF THE DEFENDANT THE FARMERS' LOAN AND TRUST COMPANY TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

[Filed April 6, 1908.]

UNITED STATES CIRCUIT COURT, DISTRICT OF UTAH. 1

No. 993. In equity.

THE UNITED STATES OF AMERICA, *Complainant,*

vs.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick and William A. Clark, *defendants.* 2 3

THE SEPARATE ANSWER OF THE DEFENDANT THE FARMERS' LOAN AND TRUST COMPANY TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

4 This defendant now and at all times hereafter saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties and other imperfections in the complainant's petition contained or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.—As to all the matters alleged in subdivisions I, II, III, IV, and V of the said petition this defendant is not informed save by said petition, and it leaves the
5 complainant to make such proof thereof as it may be advised; except that it is informed and believes that the defendants mentioned in subdivision I of said petition were at the times alleged in said petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them, respectively, are located and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign countries; and except that, as to all provisions of statutes of the
6 United States and decisions of courts of the United States purporting to be quoted or set forth in said subdivisions of said petition this defendant begs leave to refer to such statutes and decisions themselves, for the contents and provisions thereof.

II.—This defendant admits that on or about the 7th day of June, 1903, a contract in writing bearing date on that day was made and entered into between this defendant and William A. Clark, individually and as

trustee for his associates and Edward H. Harriman 7
as trustee, as therein stated, of which contract "Exhibit B" annexed to said petition and referred to in subdivision VI thereof is a true copy and to which for the terms and provisions thereof this defendant begs leave to refer as fully as if the same were herein at length set forth; and this defendant admits that the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company was deposited with and is still held and voted by this defendant in the manner, for the purpose and as stipulated and provided in and by said contract "Exhibit B." This defendant denies that the making of said contract "Exhibit B" or the 8
acts done thereunder were done pursuant to any conspiracy to suppress competition or procure a monopoly of the transportation business throughout the territory in said petition described or otherwise, and upon information and belief denies each and every allegation of a conspiracy or combination contained in subdivision VI of said petition for any of the objects or purposes therein mentioned or for any other purpose; and upon information and belief this defendant denies that the matters alleged in subdivision VI of said petition or any of them have suppressed, restrained, or in any manner restricted commerce among the several States or with foreign nations. This defendant admits upon information and belief that on or about the 9th day of July, 1902, the defendants William A. Clark and Edward H. Harriman entered into and executed an agreement in 9
writing and that "Exhibit A" to the petition is a true copy of such agreement. Except as in this paragraph expressly admitted or denied, this defendant is not informed save by said petition as to the matters alleged

in Subdivision VI thereof, and it leaves the complainant to make such proof thereof as it may be advised.

III.—This defendant denies that the act of Congress approved July 2nd, 1890, referred to in the said petition, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement or contract "Exhibit B," or of said other agreement or contract annexed as "Exhibit A" to said petition and referred to in subdivision VI thereof, and avers that the construction of railroads in the States of Utah, Nevada, and California by individuals or by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads, are matters wholly to be dealt with by the laws of the said States, respectively; and any act of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and therefore void.

IV.—This defendant avers that the said contract "Exhibit B" to the petition was made and entered into on June 7th, 1903; it avers on information and belief that the said contract "Exhibit A" to the petition was made and entered into on July 2nd, 1902. This defendant avers that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of any of the matters and things alleged

in subdivision VI of the petition accrued, if at all, more 13
than three years and more than five years next before the commencement of this suit, and is, therefore, barred by the Revised Statutes of the United States, in such cases made and provided, and all right of the complainant to relief herein is barred by the said statutes and by the laches and acquiescence of the complainant.

V.—As to all the matters alleged in Subdivision VII of the said petition this defendant is not informed save by said petition and it leaves the complainant to make such proof thereof as it may be advised; except that it admits that the stock of the Northwestern 14
Pacific Railroad Company is controlled equally by the defendants Southern Pacific Company and The Atchison, Topeka & Santa Fé Railway Company; and, upon information and belief, this defendant avers that said Northwestern Pacific Railroad Company is a corporation duly organized under the laws of the State of California, and that its lines of railroad are situated wholly within the State of California.

VI.—This defendant is advised and therefore avers that the cause of action, if any, stated in Sub-divisions I to V of said petition, and the cause of action, if any, 15
stated in Sub-division VI thereof, and the cause of action, if any, stated in Sub-division VII thereof, are wholly separate and distinct from one another, and that if either of said alleged causes of action constitutes a violation of the said Act of Congress approved July 2nd, 1890, or of any other law of the United States, such violation was and is altogether distinct from any violation of said laws alleged as constituting such other causes of action, and the said alleged causes of

16 action were improperly united in said petition. This defendant avers that the matters set forth in said petition as constituting each of said alleged causes of action are wholly irrelevant to the said other alleged causes of action.

VII.—And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is or may be charged by the said petition, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed,
17 traversed, and avoided or denied, the same is not true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to offer, maintain, and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

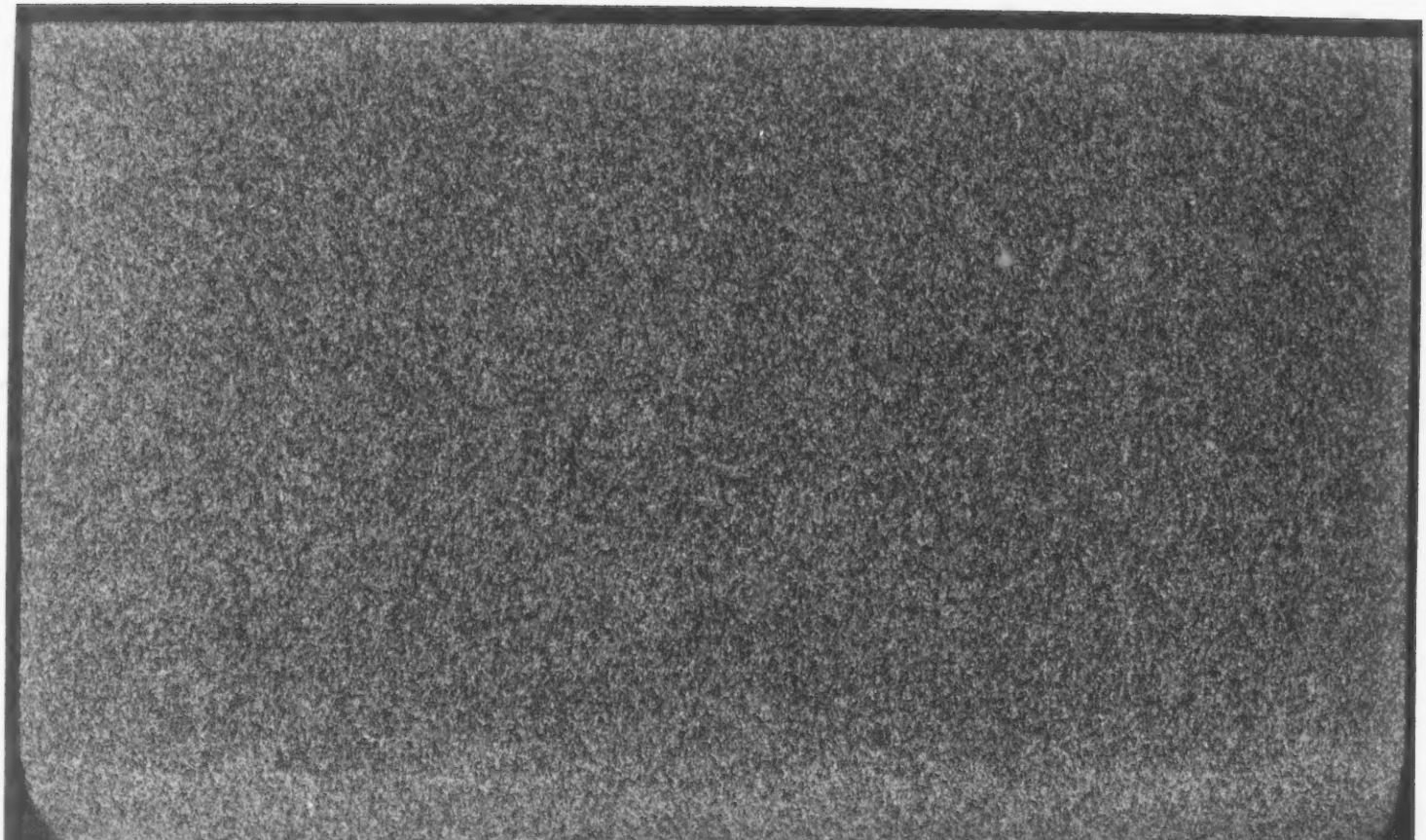
THE FARMERS' LOAN AND TRUST COMPANY,
By E. S. MARSTON, *President.*
[SEAL.]

18 Attest:
A. V. HEELY,
Secretary.

TURNER, ROLSTON & HORAN,
P. L. WILLIAMS,
Solicitors for Defendant, The Farmers' Loan and Trust Company.

P. L. WILLIAMS,
JAMES F. HORAN,
Of Counsel.

In the United States Circuit Court, District of Utah



In the United States Circuit Court, District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

versus

THE UNION PACIFIC RAILROAD COMPANY, THE OREGON SHORT LINE RAILROAD, THE OREGON RAILROAD & NAVIGATION COMPANY, THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, FARMERS' LOAN & TRUST COMPANY, EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, AND WILLIAM A. CLARK, DEFENDANTS.

THE ANSWER OF HENRY C. FRICK TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

To the honorable, the judges of the said court:

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors, and mistakes, imperfections, and uncertainties, in the bill of complaint or petition contained, for answer to said bill of complaint or petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

I deny all the allegations of the petition that at any time or in any way I was a member of any group or combination of persons which controlled, or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and I deny that I ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and I deny that in any way I ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that I ever was a member of any combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that I ever in any way was a party to or aided or abetted any such combination or conspiracy.

I never knowingly violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and I am not guilty of any of the acts, matters, or things charged in the petition which are in alleged violation of said act of Congress.

The facts, so far as I am concerned, touching the matters alleged in the petition are as follows:

I am now, and for a number of years I have been, an investor in the capital stock of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company, but these stocks I have bought with my own means as my own individual investments, and without co-operation on the part of any other person. I bought them because I believed the investments to be good ones; not only that, they were, when I bought, fairly worth the price I paid for them, but I believed in the future prospects of each one of said railroad companies, and I bought with such belief as one of the prominent reasons for my investment.

I am now, and I always have been, a great believer in the future of our country, and especially of the future of the West and the Pacific slope, and when I bought, I then looked, as I now do look, forward to a large increase in the value of the said stocks legitimately arising from the intra-state and interstate trade and traffic which I think is certain, in the ensuing years, to develop and to demand transportation over these different lines of railroad.

I never have believed, nor do I now believe, in the restriction of competition in interstate and foreign traffic as a policy of the railroad system in a country as undeveloped as in the West and to the Pacific Ocean. Neither of the systems named in the petition, either the Union Pacific, or the Southern Pacific, or the Atchison, Topeka & Santa Fe, or any other of the existing systems, or all of them combined, will, as I believe, in the near future, be much more than able to efficiently handle the trade and traffic which will seek their lines, and I feel certain that each one of these systems will have all the business that each can handle.

In my purchases of these stocks I had no idea of the formation of a monopoly which could hope to control the present, let alone the future, vast traffic east and west to and from the Pacific slope, and certainly I never designed any such amalgamation or combination of railroads as is charged in the petition, and I never directly or indirectly was a party to or an abettor or aider of any such scheme as is therein outlined.

I was elected a member of the board of directors of the Union Pacific Railroad Company in the month of October, 1904, and I have ever since been a member of said board. I deny that, since I became a director of said railroad company the Union Pacific Railroad Company became a party to or has carried out any such combination or conspiracy as is alleged in the petition, or was a party to an attempt to restrict interstate trade or traffic.

It is true that, as in all large corporations where almost daily questions are arising which demand prompt answers, an executive committee was created long before I became a member of its board of directors, which executive committee I regard as necessary to the efficient management of the company, and the actions of that executive committee have been and are now always subject to the control of the board of directors, as well as to the stockholders.

I deny the averments in the petition

"That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members, to act in such manner as such committee should deem best for the company's interests in all cases in which

specific directions shall not have been given by the board."

"And it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session."

The by-law which relates to such matters is as follows:

"SECTION 12. The directors shall elect from their number an executive committee of five members. Such committee shall hold office until the next annual election of directors, and shall, when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the board of directors. The chairman of the executive committee shall be elected by the board of directors, and, subject to the control and approval of the executive committee, shall represent it when not in session. He shall, from time to time, report to the executive committee. Any vacancy which may occur in said committee shall be filled by the board of directors. Regular meetings of said executive committee shall be held at such times and at such places in the city and State of New York or elsewhere as the committee shall from time to time determine. Special meetings may be called at any time by the chairman or any three members of the committee, to convene at such time and place as may be appointed. Three members of the committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the secretary, and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not,

at their option, shall have the power to appoint a substitute or substitutes from the members of the board of directors to act during the temporary absence of any member or members of the committee."

I deny the allegation of the petition

> "That pursuant to said by-laws, the said defendant Harriman has, with the concurrence and assistance of said individual defendants other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company."

I have, as I have stated, from time to time made investments in the capital stock of the Atchison, Topeka & Santa Fe Railway Company, and I was elected a member of the board of directors of said company in the year 1904, and have ever since continued to be a member of said board and a holder of considerable stock in said railroad company.

I deny the averments of the seventh paragraph of the bill that the purchase I made of the capital stock was in pursuance of any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to unlawfully restrain and prevent competition among the railroad systems named in the petition, and I deny that I purchased my said stock jointly with Harriman, Schiff, Kahn, Stillman, and Rogers. On the contrary, I purchased my said stock as my separate individual investment.

I deny that I was elected a member of the board of directors of the Atchison, Topeka & Santa Fe Railway Company for the purpose of aiding or abetting in any shape or

form any such alleged conspiracy as is named in the petition, and I deny that I had or have ever united myself with any conspiracy alleged by the petition to have been made by Messrs. Harriman, Schiff, Kahn and Stillman, and I deny that my election as a member of the board of directors of the said Atchison, Topeka & Santa Fe Railway Company was in pursuance of or carrying out of, or in aid of any such alleged conspiracy.

I never knew or heard of such conspiracy until the filing of the petition in this case.

I especially deny that by reason of my being upon the board of directors of the Atchison, Topeka & Santa Fe Railway Company, as also a member of the board of directors of the Union Pacific Railroad Company, that the Union Pacific Railroad Company or any of its officers or directors have had knowledge of the affairs and business of the said Atchison, Topeka & Santa Fe Railway Company, but I aver that, on the contrary, in each of my positions as director of the Union Pacific Railroad Company and as director of the Atchison, Topeka & Santa Fe Railway Company, I have been scrupulously careful not to make known to either company the acts and doings of the other.

I have not, in either of those positions, acted adversely to the interest of the company in which at the time I was acting as a member of its board of directors.

I recognize that each of these systems has a great future and each will in the near future have all the business it can properly attend to, and that each of the systems is more largely benefited by the general development of the West and of the territories through which each runs, and of the business interests that each serves than from any temporary and

comparatively trivial benefit which might arise from the restriction in competition for freight.

To some inconsiderable extent and at times the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railroad Company have been and probably will be competitors, but the future of each of these railroad systems is to be so certain and decided that I believe, and I act on that belief, that this future of each should dominate and control and thus minimize as a real factor in the policy of the companies the question of competition. In great and controlling degree the present and future interests of the territory traversed by each of these systems demands a thoroughly equipped railroad system properly and economically supplying the wants of the territory traversed by each, and this each of these railroad systems is endeavoring to give.

I have not, as a member of the Atchison, Topeka & Santa Fe Railroad Company board, disregarded or slighted its interest or welfare for the benefit of the Union Pacific Railroad Company, nor have I disclosed to the latter the business of the former, but on the contrary I have, to the best of my ability, acted as a member of the board of directors of the Atchison, Topeka & Santa Fe Railroad Company solely in the interest and the welfare of said company, and I have kept my knowledge of its affairs gained as a member of its board of directors as confidential.

I deny that the acquisition of stock by myself in the Atchison, Topeka & Santa Fe Railroad Company or my membership on the board of directors in any way changed or lessened the competition between the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company, or between the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Co.

I deny the averments of the petition that for the purpose of making more certain and effective the restraint of trade and commerce, and the elimination of competition and the monopolization of commerce referred to in the petition, that Harriman and his alleged co-conspirators caused to be purchased by the Union Pacific Railroad Company $10,000,000 par value of the preferred stock of the said Atchison, Topeka & Santa Fe Railway Company, but I admit that said purchase was made as a legitimate investment by the Oregon Short Line Railroad Company, and that the said company still owns the said stock, and I also admit that the Union Pacific Railroad Company owns the capital stock of said last-named company.

I deny the averments of the seventh paragraph of the bill, that the acquisition of the stock of the Atchison, Topeka & Santa Fe Railway Company, as alleged in said petition by myself and others, has to a large extent eliminated competition between the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company, and I deny that I or the persons alleged to be conspirators in said paragraph of the petition have caused the Southern Pacific Company to abandon certain extensions, improvements, and additions to their railway lines in the State of California, or that the Atchison, Topeka & Santa Fe Railway Company has been in the same manner caused and induced to abandon extensions and additions to its said railway lines in said State of California.

I then thought, and now think, that the action of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company in the matter of the Northwestern Pacific Railway Company, as explained in the Union Pacific Railway Company's answer, was wise and prudent, and in the best interest of both of said railroad companies

and also of the public, and I deny the concluding averment of the seventh paragraph of the bill—

> "That all of the said acts hereinbefore enumerated have been done in pursuance to the said conspiracy, so originally formed by certain of the defendants as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time as above alleged."

I admit that Jacob H. Schiff, Otto H. Kahn, and James Stillman were for years members of the board of directors of the Union Pacific Railroad Company, and I admit that there is a banking firm in the State of New York doing business under the name of Kuhn, Loeb & Company, but I deny the averments of the second paragraph of the petition—

> "which said banking house is and during all the time above stated has been the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases of said stocks hereinafter mentioned have been made."

I admit that from time to time Kuhn, Loeb & Company have bought and sold bonds and stocks in which the Union Pacific Railroad Company has been interested.

I admit that Henry H. Rogers and myself are still members of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Co.

Most of the matters and things alleged in the different paragraphs of the bill are as to transactions completed prior to the time I had any interest in either the Union Pacific Railroad Company or the Southern Pacific Company or the Atchison, Topeka & Santa Fe Railway Company; I took no part in the said matters and things averred in said paragraphs nor have I personal knowledge as to the same.

All of the matters and things alleged in the third paragraph of the bill took place prior to my election as a member of the board of directors of either the Atchison, Topeka & Santa Fe or the Union Pacific Railroad Company, and I had no personal connection with any of them. As a member of the board of directors of said two companies and also as a stockholder in said two companies and in the Southern Pacific Company, I do now have a general knowledge of the location of the different lines of railroad owned by the said different railroad companies and the systems as made up by said lines named in the petition, and I know in a general way of the Oregon Railroad & Navigation Company, of the Portland & Asiatic Steamship Company, and of the Pacific Mail Steamship Company, and I believe the routes stated in the third paragraph of the bill are correct, but I am not acquainted with the details of matters happening prior to the time that I became a member of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company.

I admit that the Atchison, Topeka & Santa Fe Railway Company has, to a certain extent since I have been on the board of directors of that company, been in competition with the Union Pacific Railway Company and the Southern Pacific Railway Company, but I never took any active part in such competition and so far as I can now recollect, no question of competition between these two companies has come up for decision before the board of directors or executive committee of either of said railroad companies at any time when I was present.

I know that the Northern Pacific Railway Company and the Great Northern Railway Company are each owners of lines of railway extending from ports on Lake Superior and also from the city of St. Paul through different Western States, and I am

informed that it is true that these two railroad companies were and are the joint owners of substantially all the stock of the Chicago, Burlington & Quincy Railroad Company, but I deny the averments in the petition that the Superme Court of the United States has held that their lines are competitive with the lines of the Union Pacific Railway Company for a large amount of traffic, both passenger and freight.

On information which I believe to be true I deny all the other allegations of competition as alleged in the third paragraph of the petition.

I have no personal knowledge of the matters and things alleged in the fourth paragraph of the petition, and on information which I believe to be true I deny that the conspiracy, as is therein stated, was ever formed.

I admit that the Oregon Short Line Railroad Company is the owner of 900,000 shares of the common and 342,000 shares of the preferred capital stock of the Southern Pacific Railroad Company, but I deny that it was acquired in pursuance of any conspiracy such as therein alleged.

I admit that the said company, as holding such stock, took its share of the increase of stock made by the Southern Pacific Company, but I deny that the Union Pacific Railroad Company controls the managment, operation, and business affairs of the Southern Pacific Railway Company and I deny that the two railroads have been operating as one single, entire system since 1901, and I deny that the matters and things alleged in said fourth paragraph were done for the purpose of monopolizing the trade and commerce among the States and with foreign nations and of eliminating competition.

I had nothing to do with the acquisition of stock by the Union Pacific Railroad Company in the Northern Pacific Railway Company, as alleged in the fifth paragraph of the bill, and I have no personal knowledge of the matters and things therein referred to.

I know of the decision of the Supreme Court of the United States reported in 197 U. S., 244, as *Harriman vs. Northern Securities Company.* I was not a party to said litigation, but I deny that so far as the Union Pacific Railroad Company was concerned that the litigation was prosecuted as alleged in the petition for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States and with foreign nations.

I have no personal knowledge of the matters and things alleged in the sixth paragraph of the petition or of the contract therein referred to, or of the conspiracy therein alleged, but so far as I know and so far as I have had any part in the management of the Union Pacific Railroad Company since 1904, I deny that there has been any conspiracy to which it was a party to suppress competition or monopolize trade and commerce among the States and with foreign nations such as is alleged in the sixth paragraph of the petition.

I deny the averments of the seventh paragraph of the petition except as hereinbefore admitted by me.

In so far as the other allegations in said petition may be material to the case of the plaintiff, I pray it be put upon proof of each and all of the same.

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And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable costs in this behalf most wrongfully sustained.

In the Circuit Court of the United States, District of Utah.

In equity. No. 993.

UNITED STATES OF AMERICA, COMPLAINANT,

vs.

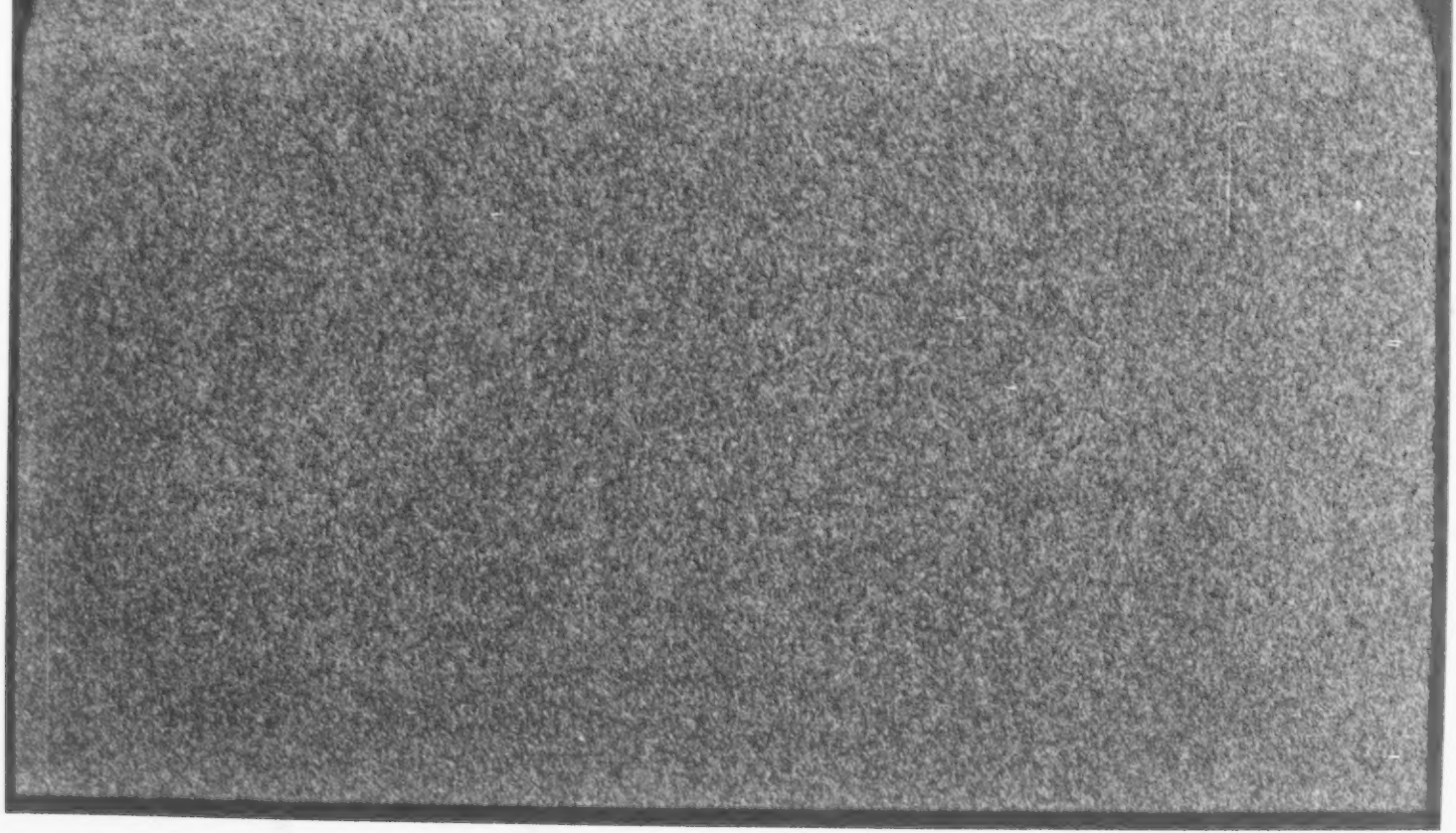
UNION PACIFIC RAILROAD COMPANY ET AL., DEFENDANTS.

SEPARATE ANSWER OF THE DEFENDANT, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

GARDINER LATHROP,
ROBERT DUNLAP,
Solicitors for Defendant.

P. L. WILLIAMS,
Of Counsel.

[Filed April 14, 1908.]



United States Circuit Court, District of Utah.

UNITED STATES OF AMERICA, complainant, *vs.* UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick and William A. Clark, defendants.	In Equity. No. 993.

SEPARATE ANSWER OF THE DEFENDANT, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA, COMPLAINANT.

This defendant, the Atchison, Topeka and Santa Fe Railway Company, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had

or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

I.

This defendant admits that the Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, this defendant, the Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, and Great Northern Railway Company were, at the times in said bill or petition mentioned, and now are, common carriers, each engaged or employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce among the several States and with foreign nations.

II.

As to all the matters and things set forth in subdivision II of said complainant's petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

III.

And this defendant admits that it has been, for a period of more than eight years last passed, the owner, and in control by direct ownership and by the ownership of the stock, of railway companies owning a portion of certain lines, and now by ownership, of a line of railway reaching from Chicago in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico and Arizona, and the State of California, to the city of San Francisco and to Tidewater at San Diego, California; that said line of railway touches the Union Pacific at Kansas City, Missouri, and to a certain extent, but in connection with other connecting lines of railroads, is and has been competitive with the lines of the Union Pacific Railroad Company and the Southern Pacific Company, in connection also with other connecting lines of railroads, for certain traffic to and from the Pacific coast, and also from the Orient in connection with steamship lines to and from various points in the east and the Mississippi Valley and in the State of Colorado and other interior States, but largely by means of such connecting lines of railway of other railway companies as aforesaid.

It admits that its tracks cross the continent between those of the Southern Pacific Company and those of the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles and Salt Lake Railroad constituted the only outlet to the east by rail from territory along the Pacific coast touched by it at San Francisco, Los Angeles, and San Diego, but denies that it constituted the only outlet to the

east by rail from all the territory along the Pacific coast south of Portland to the Mexican border other than the lines of the Union Pacific Railroad Company and said Southern Pacific Company. On the contrary, it avers that there were other lines connecting with said Southern Pacific Company south of Portland which formed an outlet to the east.

It denies that it was for a number of years engaged in operating a line of steamships to Oriental ports from the port of San Diego, California. It admits that traffic which was competitive as between said Southern Pacific and Union Pacific companies and this defendant was and is of considerable volume, both passenger and freight.

As to all and singular the other matters and things set forth in subdivision "III" of said petition or bill, this defendant says that it is a stranger as to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

IV.

As to the matters and things set forth in subdivision "IV" of said petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves said complainant to make such proof thereof as it shall be able to produce.

V.

As to all and singular the matters and things in subdivision "V" of said petition or bill contained, this

defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VI.

This defendant denies that said defendant E. H. Harriman secured to said The San Pedro, Los Angeles and Salt Lake Railroad Company the use of certain of the tracks owned or controlled by this defendant, The Atchison, Topeka and Sante Fe Railway Company, in southern California. On the contrary this defendant avers that through the action of its own directors it voluntarily granted said The San Pedro, Los Angeles and Salt Lake Railroad Company trackage rights, that is, the right to operate its trains over a portion of the line of this defendant in Southern California, such arrangement being an advantageous one to this defendant, inasmuch as it derived a revenue from a part of the use of its property by said The San Pedro, Los Angeles and Salt Lake Railroad Company.

As to all and singular the other matters and things contained in subdivision "VI" of said petition or bill, this defendant says that it is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VII.

This defendant admits that in the year 1904 the defendant Harriman represented to certain officials

of this defendant that he and other individuals associated with him had acquired approximately three hundred thousand (300,000) shares of the stock of this defendant, and stated that he thought that their interests should be represented in the directorate of this defendant, but this defendant denies that the defendant Frick joined in or made any such representation or statement. On information and belief, this defendant avers that at the time when such representation and statement were made by said Harriman the defendant Frick had not purchased any stock in the defendant company and that he has never been associated with said Harriman or any of the defendants in any purchases of stock in this defendant, but that all shares of stock in this defendant held by him were purchased by him and are held by him severally and individually as an investment. This defendant avers that its officials stated to said defendant Harriman that they would not be willing to admit representatives of the Union Pacific Railroad Company or of the Southern Pacific Company to places on the Board of Directors of this defendant, and it avers further that the officials of this Company were thereupon assured by the defendant Harriman that neither the Union Pacific Railroad Company nor the Southern Pacific Company had any interest in said stock purchased by himself and associates and that such stock had been purchased by himself and associates as investments. This defendant admits that by reason of the fact that under the cumulative system of voting provided for by the laws of Kansas the defendant Harriman, by virtue of the stock in the defendant company held by himself and his associates and by virtue

of the proxies which he might be able to obtain from other stockholders would probably have been able to elect at least two directors of the defendant company, and that the officials of this defendant consented and agreed that said Harriman and his associated owners of stock of this defendant might nominate two directors who would be satisfactory to the Board of Directors of this defendant, but with the distinct understanding that they were to represent only the stock held by himself and his associates individually and in no sense should act as representatives of either the Union Pacific Railroad Company or of the Southern Pacific Company. Accordingly, on February 8, 1905, the defendants, Frick and Rogers, were chosen as directors to fill vacancies on the Board of Directors of this defendant, and said defendants ever since have been and now are directors of this defendant. This defendant denies that said Union Pacific Railroad Company, through said Rogers or Frick, has had knowledge of the affairs or business of this defendant, and this defendant avers, on information and belief, that the said Rogers and Frick at all times have acted and voted as directors of this defendant conscientiously in the interest of this defendant and not in the interest of either the Union Pacific Railroad Company or the Southern Pacific Company. This defendant denies that the said Rogers and Frick, or either of them, united themselves with the said Harriman or with any of the defendants in any conspiracy alleged in the bill of complaint. This defendant avers, on information and belief, that the stock originally acquired by said Harriman and his associates was all common stock, but that subsequently some of this common stock

was sold. This defendant states that its records at present show that Mr. H. H. Rogers holds one hundred (100) shares of stock, Mr. Frick thirty-five thousand three hundred (35,300) shares of stock, Mr. Harriman two thousand three hundred (2,300) shares of stock, and Kuhn, Loeb and Company, and others, believed to be in the interest of such firm, one hundred fifty-one thousand one hundred forty-nine (151,149) shares of the stock of this defendant. But it has not been advised, and it does not know, that any of the above stock was purchased for or on behalf of the Union Pacific Railroad Company, but on the contrary avers that no stock has ever appeared on its records in the name of the said Union Pacific Railroad Company or of any of its associated companies. This defendant further denies that competition between the systems of railway controlled by said Union Pacific Railroad Company and that of this defendant has to any extent been eliminated, either on account of the holdings of the stock of the said Harriman and his associates or otherwise. This defendant further denies that it has been induced by said Harriman and his associates to abandon extensions or additions to its lines of railway in the State of California.

It admits that certain lines of railroad partially constructed within the State of California, formerly owned by corporations whose stock was owned or controlled by this defendant, and that certain other lines of railroad partially constructed within the State of California, formerly owned by corporations whose capital stock was owned or controlled by the Southern Pacific Company, were conveyed to a company incorporated under the laws of California under the name

of "Northwestern Pacific Railroad Company," and that one half of the capital stock of said last-named company is owned by this defendant and the other half by the Southern Pacific Company, but it states that all of the corporations which formerly owned said lines of railway and said Northwestern Pacific Railway Company itself were incorporated under the laws of the State of California and that such sales and consolidation were made under and by authority of the laws of said State; that said lines of railway so consolidated formed by further construction connecting lines, and such consolidation thus afforded better railway facilities to the northwestern part of California than had been theretofore afforded by the several respective lines theretofore operated by their several respective companies. This defendant further says that prior to such consolidation the companies whose stock was as aforesaid owned by it only owned and operated about fifty miles out of Eureka and a few miles of detached line in Mendocino County; that such consolidation gave this defendant, through said Northwestern Pacific Railway Company, access for traffic to the territory served by said several lines north of San Francisco Bay; that said transaction did not prevent competition or result in a monopoly, but, on the contrary, prevented the Southern Pacific Company from having or maintaining a monopoly in the aforesaid territory north of San Francisco Bay; that but for this consolidation it would have been impracticable to build the extension connecting Eureka with the San Francisco Bay or to furnish needed railway facilities to the territory which should be served by these lines.

This defendant denies that the lines of railway of the Union Pacific Railroad Company and the Southern Pacific Company and of this defendant are operated in harmony with each other under agreements or understandings as to rates or divisions of business, and this defendant says that it was at no time a party to any alleged conspiracy set forth in said petition or bill, and that as to all and singular the other matters and things in subdivision "VII" of said petition or bill this defendant is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VIII.

And this defendant submits to this honorable court that all and every of the matters in said complainant's petition or bill mentioned and complained of are matters with respect to which the said complainant is not entitled to any relief as against this defendant from a court of equity, and this defendant hopes that it will have the same benefit of this defense as if it had demurred to said complainant's bill or petition.

IX.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that if there is any other matter, cause, or thing in said complainant's said bill of complaint or petition contained material or necessary for this defendant to make answer unto

and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, the same is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,
By W. B. JANSEN,
Its Fourth Vice-President.

GARDINER LATHROP,
ROBERT DUNLAP,
Solicitors for the Atchison, Topeka and Santa Fe Railway Company.
P. L. WILLIAMS,
Of Counsel.

No. 963.

United States Circuit Court, District of Utah.

In Equity.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

UNION PACIFIC RAILROAD COMPANY ET AL.,

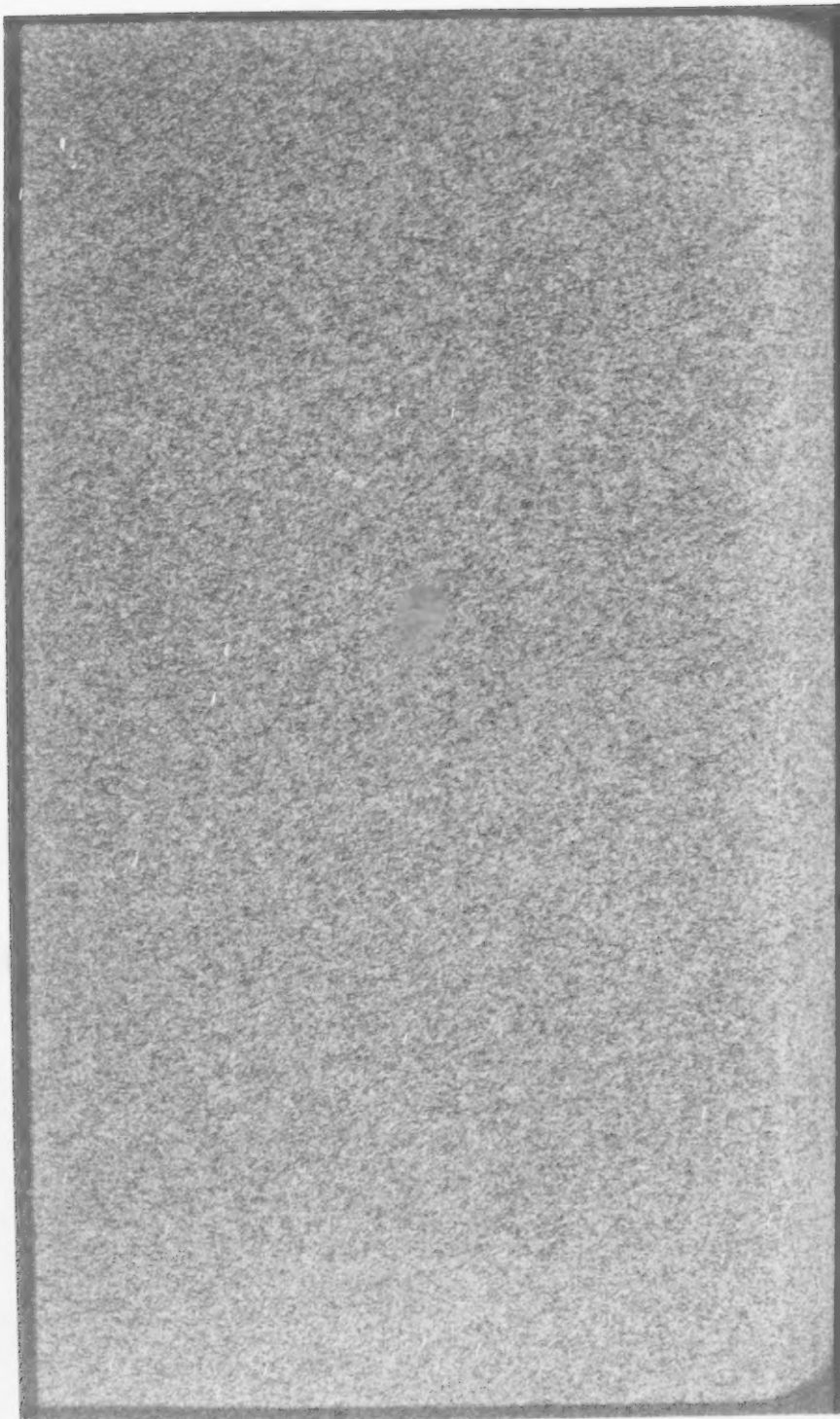
DEFENDANTS.

ANSWER OF THE DEFENDANT HENRY H. ROGERS.

SHEARMAN & STERLING,
Attorneys for defendant.

JAMES M. BECK,
P. L. WILLIAMS,
Of counsel.

[Filed May 2, 1908.]



United States Circuit Court, District of Utah.

No. 993. In Equity.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark,
Defendants.

THE ANSWER OF HENRY H. ROGERS TO THE PETITION OF THE UNITED STATES OF AMERICA.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he

now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons, which controlled or sought to control the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy, or aided or abetted any conspiracy, which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy, whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all com-

petitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies that he ever violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer, this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with any view to exercising any control in the respective companies beyond the partial control, which this defendant, in common with any stockholder, exercises in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately result from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or in conjunction with others, to restrain competition in interstate or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist and that he never had any thought, purpose, or plan, either individually or in conjunction with others, to

form a combination of railroads, as is charged in paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the eighth day of October, 1901, and is still a director of said company. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad, and has never knowingly failed in any duty which he owed as such director either to the railroad company or to the public.

Further answering the said petition, by paragraphs, this defendant says:

I.

The averments contained in the first paragraph of the petition this defendant believes to be true.

II.

(1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of paragraph II of the petition have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the eighth day of October, 1901, and is still a director of said company.

(3) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, re-

spectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(4) He admits that said Harriman, Schiff, Stillman, and Frick became directors and served as such as stated in Paragraph II of said petition.

(5) As to the true meaning and effect of the by-laws, referred to in Paragraph III of the petition, this defendant asks for greater certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production so that this court may itself determine their true meaning.

(6) He denies that pursuant to such by-laws or otherwise the said Harriman has with the concurrence of said individual defendants, other than defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III.

Most of the averments contained in Paragraph III of the petition refer to transactions which took place prior to the time when this defendant became a director in the railroad company, and as to such transactions this defendant disclaims personal knowledge. Except as hereinafter specifically admitted or denied, the other averments refer to transactions as to which this defendant has no personal knowledge. This defendant, however, on information and belief, accepts and adopts the respective admissions and denial to Paragraph III of the said petition which are contained in the joint and several answer of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be

regarded as part of this answer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV.

(1) He denies on information and belief that in the spring of 1901, or at any other time, said Schiff, Kahn, Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the foreign states and between said states and several countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines in respect to any such commerce; or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that he and the said ndants or any of them ever entered into a combination or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies; or to place restraint upon any competitive commerce, if any such there was, carried on by such companies; or to monopolize or attempt to monopolize the same; or to suppress any competition existing between any of said companies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company

acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding; but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of the Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) He admits on information that, thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co. 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and which it still owns.

(5) He admits on information that thereafter, when on or about the 20th day of July, 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in July, 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription, said Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said South-

ern Pacific Company, exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company and has ever since owned, and still owns, the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock, and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company, out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired or has been held by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of the Southern Pacific Company held the 3d day of April, 1901, and at every meeting of the stockholders of said company since said date, the stock so acquired and owned by said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares, through its duly authorized agents and proxies, and by the voting by the same agents and proxies, upon shares of other stockholders of said Southern Pacific Company, delegated to it, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits on information that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms and corporations residing in many different

places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents or proxies of other stockholders, and their management of said company.

(9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines and asks that petitioner be put upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers, on information, that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual pur-

chases of said stock, made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901, and for said 150,000 shares in 1902, and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid, by the exercise of subscription rights, did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of Paragraph IV of said petition not herein expressly admitted.

V.

(1) He denies, on information, that the said Schiff, Kahn, Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,841 par value of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the stock of the Great Northern Railway Company and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce, or any part thereof.

(7) This defendant was not a party to the litigation which was begun in the Circuit Court of the United States for the District of New Jersey, referred to in paragraph V of the petition, but, on information and belief, he denies that the litigation was prosecuted, as alleged in the petition, for the

purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize trade and commerce among the several States and with foreign nations.

VI.

This defendant denies any and every averment contained in paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the said averments be material and pertinent to any lawful inquiry before this Court.

VII.

(1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Stillman, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904, he and said Frick were elected directors of the Atchison, Topeka

and Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company. This defendant avers that in discharging his duties as a director of the said Atchison Railroad Company, he has always endeavored to protect and advance its best interests and he has never intentionally acted adversely to such interests either for the benefit of the Union Pacific Railroad Company or any other railroad company.

(3) He admits on information that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned, $10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition, or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that competition between such lines has been eliminated or in any wise restricted.

(8) As to any other averments contained in the paragraph VII of the petition, not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

In the United States Circuit Court, District of Utah

THE UNITED STATES OF AMERICA, COMPLAINANT,

against

THE UNION PACIFIC RAILROAD COMPANY, THE OREGON SHORT LINE RAILROAD COMPANY, THE OREGON RAILROAD & NAVIGATION COMPANY, THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE SOUTHERN PACIFIC COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, FARMERS' LOAN & TRUST COMPANY, EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, AND WILLIAM A. CLARK, DEFENDANTS.

THE ANSWER OF JAMES STILLMAN TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

[illegible]

[illegible]
Solicitors for Defendant.

[illegible]
[illegible]
Of Counsel.

[illegible]

United States Circuit Court, District of Utah.

No. 993. In Equity.

The United States of America, *Complainant,*

vs.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, *Defendants.*

THE ANSWER OF JAMES STILLMAN TO THE PETITION OF THE UNITED STATES OF AMERICA.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he

now a resident of the district of Utah, and that this Court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons which controlled or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all com-

petitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies that he ever violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer, this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with any view to exercising any control in the respective companies beyond the partial control, which this defendant, in common with any stockholder, exercises in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately flow from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or in conjunction with others, to restrain competition in interstate or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist and that he never had any thought, purpose, or plan, either individually or in conjunction with others, to

form a combination of railroads, as is charged in paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the sixth day of December, 1897, and continued as such until the thirteenth day of February, 1908. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad, and has never knowingly failed in any duty which he owed as such director either to the railroad company or to the public.

Further answering the said petition, by paragraphs, this defendant says:

I.

The averments contained in the first paragraph of the petition this defendant believes to be true.

II.

(1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of paragraph II of the petition have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the thirteenth day of February, 1908, when he resigned.

(3) He admits that he was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the thirteenth day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(4) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of

a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(5) He admits that Harriman, Schiff, Rogers, and Frick became directors and served as such as stated in Paragraph II of said petition.

(6) As to the true meaning of the by-laws referred to by petitioner in Paragraph III, this defendant asks for greater certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production so that this court may itself determine their true meaning.

(7) He denies that pursuant to such by-laws or otherwise the said Harriman has with the concurrence of said individual defendants, other than defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III.

This defendant on information and belief, accepts and adopts the respective admissions and denials to Paragraph III of the said petition which are contained in the joint and several answer of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part of this an-

swer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV.

(1) He denies that in the spring of 1901, or at any other time, he and the defendant Schiff, Kahn, Harriman and Union Pacific Railroad Company or any of them, conspired to restrain trade and commerce among the foreign States and between said States and several countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines in respect to any such commerce; or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that he and the said defendants or any of them ever entered into a combination or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other trans-continental railway companies or steamship companies; or to place restraint upon any competitive commerce, if any such there was, carried on by such companies; or to monopolize or attempt to monopolize the same; or to suppress any competition existing between any of said companies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capital stock of said Southern Pacific

Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding; but he denies that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) He admits on information that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Co. 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned and which it still owns.

(5) He admits on information that thereafter, when on or about the 20th day of July, 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription at par, said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of said Southern Pacific Company; and that thereafter, in July, 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription at par, said Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company exercised its right and subscribed for and received 162,000 additional shares of the preferred

stock of said Southern Pacific Company and has ever since owned, and still owns, the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired or has been held by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of the Southern Pacific Company held the 3d day of April, 1901, and at every meeting of the stockholders of said company since said date, the stock so acquired and owned by said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares, through its duly authorized agents and proxies, and by the voting by the same agents and proxies, upon shares of other stockholders of said Southern Pacific Company delegated to it, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits on information that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company,

if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents or proxies of other stockholders and their management of said company.

(9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines, and asks that petitioner be upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers on information that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock, made in good faith, and were completed and fully executed by the delivery of the

certificates for said 750,000 shares in 1901, and for said 150,000 shares in 1902, and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid, by the exercise of subscription rights did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots, aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of paragraph IV of said petition not herein expressly admitted.

V.

(1) He denies that he and the said Schiff, Kahn, Harriman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000

par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase, the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,841 par value of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced so that at the date of the commencement of this suit, the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the Northern Pacific Railway Company, and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce, or any part thereof.

(7) This defendant was not a party to the litigation which was begun in the Circuit Court of the United States for the District of New Jersey, referred to in paragraph V of the petition, but, on information and belief, he denies that the litigation was prosecuted, as alleged in the petition, for the purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother com-

petition, and monopolize trade and commerce among the several States and with foreign nations.

VI.

This defendant denies any and every averment contained in paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the said averments be material and pertinent to any lawful inquiry before this court.

VII.

(1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Rogers, and Frick, or any of them, in the year 1904, or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits on information that in the year 1904, the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have

since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said the Atchison, Topeka and Santa Fe Railway Company.

(3) He admits on information that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned $10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition, or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company or all of them have any control, partial or otherwise, of said the Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said the Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that

competition between such lines has been eliminated or in anywise restricted.

(8) As to any other averments contained in the paragraph VII of the petition, not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

No. 888.

In the United States Circuit Court of Appeals

for the Ninth Circuit.

THE UNITED STATES OF AMERICA, Complainant,

vs.

[illegible]

[illegible]

[illegible]

United States Circuit Court, District of Utah.

No. 993. In equity.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark,

Defendants.

THE JOINT AND SEVERAL ANSWER OF THE DEFENDANTS JACOB H. SCHIFF AND OTTO H. KAHN TO THE ORIGINAL PETITION OF THE UNITED STATES OF AMERICA.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and

advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, for their joint and several answer thereunto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

I.

These defendants deny that they or either of them ever knowingly violated the provisions of an act of Congress approved July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." They deny all the allegations of the petition charging that they or either of them were connected with, or concerned in, any combination or conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries or any unlawful combination or arrangement of any kind whatsoever between the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company or affecting any portion or portions of the system of said Union Pacific Railroad Company and any portion or portions of the system of said Southern Pacific Company or any railroad companies or railroad lines whatsoever. They aver that all of the transactions between the firm of Kuhn, Loeb & Co. and said Union Pacific Railroad Company or the Oregon Short Line Railroad Company alleged in the petition, in so far as such transactions occurred, were, so far as said firm of Kuhn, Loeb & Co. and these defendants were concerned, in the ordinary course of their business as bankers and were not part of, or in any manner connected with, any conspiracy or combination of any kind whatsoever between the said firm of Kuhn, Loeb & Co. or these defendants or either of them and any other person or persons or corporation or corporations whatsoever. They aver

that in voting as directors of said Union Pacific Railroad Company, and in the case of the defendant Kahn, as a member of the executive committee of the board of directors of said company in favor of any transactions on the part of said company they so voted because they deemed such transactions to be lawful and advantageous to said company; and they aver that in all their actions as directors of said company they were guided solely by their best judgment as to the best interests of said company. They aver that they and the firm of Kuhn, Loeb & Co. have voted such shares of stock of the Union Pacific Railroad Company as they from time to time have held in such manner as seemed to them to be for the best interests of the company and its shareholders. They aver that on February 26, 1906, both of these defendants resigned from the board of directors of the Union Pacific Railroad Company; that such resignations were duly accepted by the board of directors of said company on April 10, 1906; and that since said resignations they have had no connection with, or voice in, the management of said company or of any of the other railroad companies mentioned in the petition; and for that reason these defendants aver that they are not proper parties defendant to this suit. And further answering the petition these defendants say:

II.

They admit that the defendant, Jacob H. Schiff, was a director of said Union Pacific Railroad Company from March 1, 1898, until February 26, 1906, when he resigned; and that the defendant, Otto H. Kahn, became a director of said company on July 1, 1897, and a member of the executive committee of the board of directors of said company on December 8, 1897, and continued to be a director of said company and a member of said committee from said respective dates until February 26, 1906, when he resigned.

III.

They admit that during all of the period alleged in the petition the defendants Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm doing business in the city of New York under the firm name and style of Kuhn, Loeb & Co., and they admit that many, although by no means all, of the purchases and sales of shares of stock and bonds mentioned in said petition were made from or to, or through the instrumentality of, said firm; but they deny that said firm of Kuhn, Loeb & Co. were ever appointed as, or held the office of, "fiscal agent" of said Union Pacific Railroad Company, and they deny that while these defendants were members of its board of directors said company appointed any person, partnership, or corporation as its fiscal agent or agents.

They deny that during the time when they were directors of said company, or when either of them was a director thereof, the by-laws of said Union Pacific Railroad Company respecting the power and authority of the executive committee of its board of directors and the power and authority of the chairman of said executive committee were in the form, or of the legal effect, alleged in subdivision II of the petition; and for the provisions of said by-laws in respect of the power and authority of the executive committee and the chairman of the executive committee during said period these defendants respectfully refer to the records of said corporation.

They deny that, pursuant to the by-laws of said corporation or otherwise, the defendant Harriman at any time while these defendants were directors, or either of them was a director, of said Union Pacific Railroad Company, with or without a concurrence and assistance of the individual de

fendants in this suit, other than defendant Clark, who were members of the executive committee or the board of directors of said company, dominated the affairs and controlled the management of said company, and they allege that while these defendants were members of the board of directors of said corporation its by-laws in respect to the powers and duties of its officers were such as are usually adopted by large railroad corporations. They have no knowledge as to the control of the management of said company or as to its by-laws since they ceased to be directors thereof.

IV.

They deny that from and after January 1, 1901, or at any time, they, or either of them, and the defendants Edward H. Harriman and James Stillman, together with Henry H. Rogers and Henry C. Frick, or any of them, or with any other person or persons who joined with them have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company.

They admit that the said Edward H. Harriman was the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company from January 1, 1901, to February 26, 1906, when these defendants resigned as directors thereof, and that he was the president of said corporation from January, 1904, to said February 26, 1906; they are informed and believe that the said Harriman, since said February 26, 1906, has been and still is the chairman of said board of directors and the president of said corporation.

V.

They admit the ownership by said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, and Southern

Pacific Company, respectively, of capital stock of other companies, as alleged in subdivision III of the petition, from January 1, 1901, to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company; but they deny that ever prior to said February 26, 1906, said Union Pacific Railroad Company managed said Oregon Short Line Railroad Company or said the Oregon Railroad and Navigation Company. They deny that said Union Pacific Railroad Company controlled said corporations or either of them except to the extent of voting its stock in said corporations for the election of members of their boards of directors, but these defendants aver that each of those companies controlled and managed its own railroads and other property in its own name and by its own officers and agents.

These defendants have no knowledge or information sufficient to form a belief as to the allegations of subdivision III of the petition respecting alledged competition between the various companies; but they aver that, if there was any competition between any railroad lines or steamship lines alleged to be controlled by the Southern Pacific Company and the lines alleged to be controlled by the Union Pacific Railroad Company, such competition was not of such a character as to render illegal the acquisition of stock of the Southern Pacific Company by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company.

VI.

They deny that in the spring of 1901, or at any other time, they, or either of them, and the defendants Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain the trade and commerce among the several States and between said States and foreign countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or

any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines, in respect to any such trade and commerce; or to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that they, or either of them, and the said defendants or any of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

They admit that in February, 1901, said firm of Kuhn, Loeb & Co. acquired 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding, with the expectation of offering to said Union Pacific Railroad Company an opportunity of purchasing said shares of stock; they admit that said firm subsequently sold said stock to said Union Pacific Railroad Company (these defendants not voting upon the purchase as directors of said Union Pacific Railroad Company), but they deny that the said stock was acquired or sold by said firm in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

They admit that thereafter, to wit, on or about the 31st day of May, 1902, said Kuhn, Loeb & Co. sold to defendant Oregon Short Line Railroad Company 150,000 additiona

shares of stock of said Southern Pacific Company; but they deny that the said additional shares were acquired or sold by said firm in pursuance of any conspiracy or combination, or for any of the purposes alleged in the petition.

They admit that thereafter, to wit, in 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, but they deny that these defendants, or either of them, and the defendants Harriman, Stillman, and said Union Pacific Railroad Company, or any of them, caused said issue of preferred stock. They admit that said Oregon Short Line Railroad Company as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received 180,000 shares of the preferred stock of said Southern Pacific Company of the par value of $18,000,000.

They deny that the said preferred stock was issued by said Southern Pacific Company, or that any of the common or preferred stock of said company was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy with which either of these defendants was in any way connected, or for any of the purposes or with the intent on the part of these defendants or either of them as alleged in said petition.

They deny that ever, prior to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, said Union Pacific Railroad Company or said Oregon Short Line Railroad Company controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may have resulted from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern

Pacific Company. They have no knowledge or information sufficient to form a belief as to whether said companies have, or either of them has, controlled the management or operation or business affairs of said Southern Pacific Company at any time since said date.

They admit that at the annual meetings of the stockholders of the Southern Pacific Company from the time the stock was so acquired and owned by said Oregon Short Line Railroad Company until February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, such stock constituted a majority of the shares represented at such meetings, though not a majority of the entire capital stock of said company; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by a large number of other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company was able to elect the directors of said Southern Pacific Company; but they aver that at none of said meetings were any votes cast by any stockholder against the persons so elected. They have no knowledge or information sufficient to form a belief as to the voting of said stock since said February 26, 1906.

They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company ever was, or is, voted at the dictation or instance of these defendants, or either of them, or at the dictation or instance of these defendants, or either of them, acting in concert with said Union Pacific Railroad Company, Harriman and Stillman, or any of them; or that said stock was ever voted for the purposes or ends alleged in subdivision IV of the petition; and they deny that the directors of said Southern Pacific Company have ever been selected or caused to be elected by them, or either of them, or by them, or either of them, acting in concert with others.

They deny that competition between said Union Pacific Railroad and Southern Pacific Company, with their steamship lines as set forth in the petition, or otherwise, if any such competition ever existed, has been destroyed or that any interstate or foreign commerce which at any time was the subject of competition was ever, while these defendants were directors of said Union Pacific Railroad Company, monopolized in the hands or under the control of said company and subsidiary corporations and its officials, or any of them.

They deny each and every allegation of subdivision IV of the petition, respecting these defendants, and each and every allegation therein respecting any conspiracy or combination between these defendants, or either of them, and said Harriman, Stillman, and Union Pacific Railroad Company, or any of them, for any of the purposes or with any of the intents or results alleged.

VII.

They deny that they, or either of them, and the said Harriman, Stillman, Union Pacific Railroad or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company, or any other amount thereof, pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and they deny all the allegations of subdivision V of the petition respecting any conspiracy or combination for any purpose between these defendants, or either of them, and any of the defendants to this suit.

They admit that in the year 1901, said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company,

and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000; but they deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition

They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oreg Short Line Railroad Company of $82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of said Harriman and of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company, and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares; but they deny that said sale was caused by these defendants or either of them, or by them or either of them acting with any other parties, and they deny that said stock of the Northern Securities Company was held by said Harriman and Pierce, pursuant to any conspiracy to which these defendants were parties, or either of them was a party.

They admit the commencement of a suit by the United States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

They admit the commencement thereafter of a suit by defendants Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce and the Equitable Trust Company of New York, as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the courts by said decrees approved the distribution

by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its co-petitioners in said suit; and that as a result of said distribution, and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company; and 216,520 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit. They deny that they were parties, or either of them was a party, to said suit, and deny that they, or either of them, in any way opposed or protested against any proposed distribution of shares by said Northern Securities Company as alleged in the petition.

They aver that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; but they have no knowledge or information sufficient to form a belief as to what amount of said stock has been disposed of by said Oregon Short Line Railway Company, or what amount thereof, if any, it owned at the date of the commencement of this suit or now owns; they deny that said Oregon Short Line Railway Company ever held or now holds any stocks as the agent or representative of these defendants, or either of them, or of any conspirators of whom either of these defendants was one, or pursuant to any conspiracy to which these defendants were parties, or either of them was a party.

They deny that they, or either of them, and the said Harriman, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Harriman, Pierce, Oregon Short Line Railroad Company and Equitable Trust Company of New York against said Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce, or to smother competition or monopolize any trade or commerce as in said petition alleged.

They deny each and every allegation of said subdivision V of the petition not herein expressly admitted, or respecting which they have not stated that they have no knowledge or information sufficient to form a belief.

VIII.

They have no knowledge or information sufficient to form a belief as to when, or by whom, or for what purpose or purposes the defendant San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated, or as to what line or lines of railway it had acquired or was engaged in constructing, prior to the year 1902.

They deny that they, or either of them, for the purpose of restraining trade and commerce among the States and with foreign nations, and monopolizing the same, or of preventing competition, or for any other purpose, brought any suit or suits, or were concerned in bringing any suit or suits, in the courts for the purpose of harassing or injuring the said San Pedro, Los Angeles and Salt Lake Railroad Company, or for any other purposes alleged in subdivision VI of said petition; and they deny that they made, or were concerned in the making of, any threats or caused any interference as in said subdivision alleged.

They deny that the contracts referred to in subdivision VI of said petition, alleged copies of which are annexed thereto, and marked, respectively, exhibits "A" and "B," were en-

tered into for the purposes alleged in said subdivision, and they deny that the consummation of said contracts had the results in said subdivision alleged.

They deny that they were parties, or either of them was a party, to any combination, confederation, or conspiracy for the purposes mentioned in the said subdivision or any of them; and they deny each and every allegation in said subdivision contained respecting these defendants.

IX.

They deny that pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems, they, or either of them, and the defendants, Harriman, Stillman, Rogers, and Frick, or any of them, in the year 1904 or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and they deny that they, or either of them, at any time demanded of, or were concerned in or took part in any demand upon, any officials of said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein, or any other person or persons, should be elected directors of said company.

They deny that the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Sante Fe Railway Company pursuant to any demand made by these defendants, or either of them, or pursuant to any conspiracy to which the defendants were parties, or either of them was a party, or for any other reason alleged in subdivision VII of the petition herein.

They deny that in the summer of 1906 they, or either of them, caused or were concerned in causing the Union Pacific

Railroad Company or Oregon Short Line Railroad Company to purchase $10,000,000 par value, or any other amount, of the stock of the Atchison, Topeka and Santa Fe Railway Company, and have no knowledge or information sufficient to form a belief as to the purposes of the Union Pacific Railroad Company or Oregon Short Line Railroad Company in making any purchase of stock of said Atchison, Topeka and Santa Fe Railway Company, which it may have made.

They have no knowledge or information sufficient to form a belief as to the course which has been pursued by the Atchison, Topeka and Santa Fe Railway Company in respect to the matters alleged in said subdivision VII of the petition, or as to the allegations of competition between the system of railways alleged to be controlled by the Union Pacific Railroad Company and said Atchison, Topeka and Santa Fe Railway Company, or any elimination thereof, if such competition ever existed.

They deny that any of the acts or transactions alleged in subdivision VII were the result of any conspiracy, combination, or contract to restrain commerce among the several States and with foreign countries, or were done or occurred in pursuance of any conspiracy or combination for any purpose to which these defendants were parties, or either of them was a party; and they deny each and every allegation of said subdivision VII respecting these defendants.

X.

They allege that, so far as practicable, they have confined this answer to the allegations of the petition which related to the matters and things of which these defendants have knowledge, or with which they had some connection, either individually or as directors of the Union Pacific Railroad Company. As to the other allegations of the petition, they have refrained

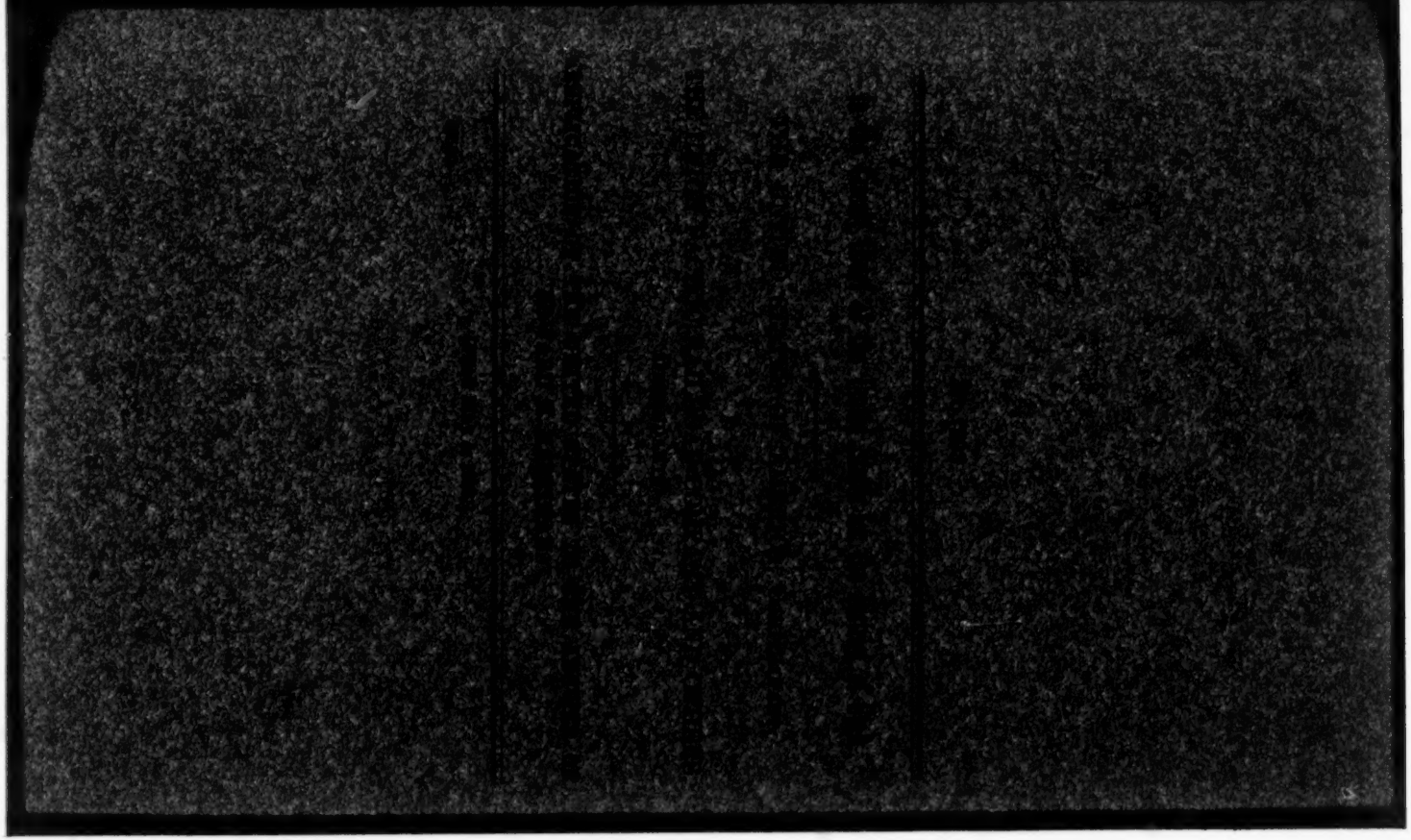
from making either admissions or denials thereon, and pray that the complainant be put upon proof of each and all of the same, if such other allegations be material or pertinent to any inquiry before this court as regards these defendants.

XI.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are in the said petition charged; without that any other matter, cause, or thing in the said petition contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JACOB H. SCHIFF,
OTTO H. KAHN,
Defendants.
By CRAVATH, HENDERSON & DE GERSDORFF,
Their Solicitors.

PAUL D. CRAVATH,
P. L. WILLIAMS
Of Counsel.



In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF EDWARD H. HARRIMAN, ONE OF THE DEFENDANTS IN THE ABOVE-ENTITLED ACTION.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Edward H. Harriman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908

P. L. WILLIAMS,
Attorney for Edward H. Harriman.

No. 926.

In the Circuit Court of the United States for the District of Utah.

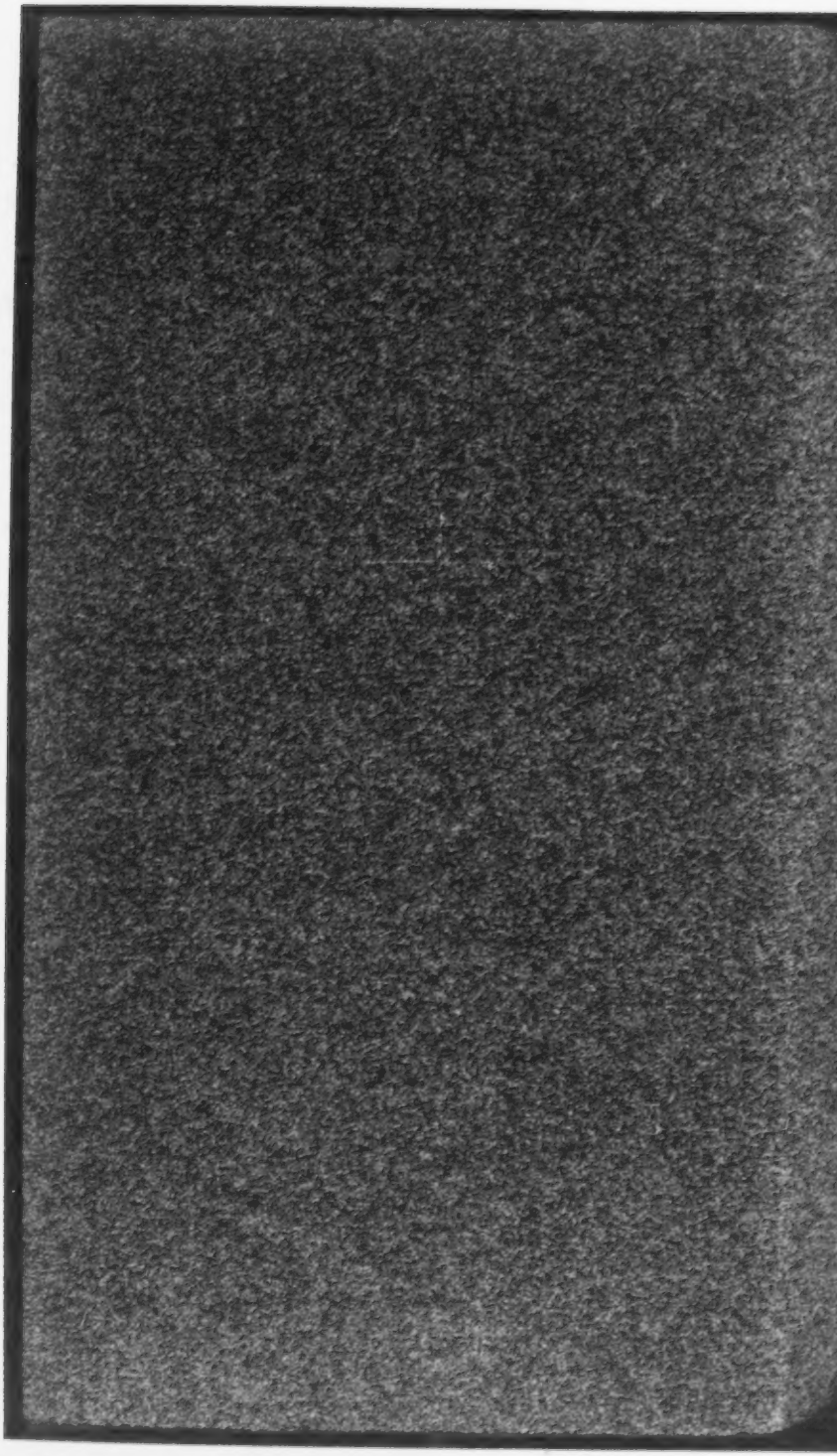
THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF THE SOUTHERN PACIFIC COMPANY.

[Filed May 4, 1906.]



In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, Defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF THE SOUTHERN PACIFIC COMPANY, ONE OF THE DEFENDANTS IN THE ABOVE-ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the Southern Pacific Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.

P. L. WILLIAMS,
Attorney for Southern Pacific Company.

No. 888.

In the Circuit Court of the United States for the District of Utah.

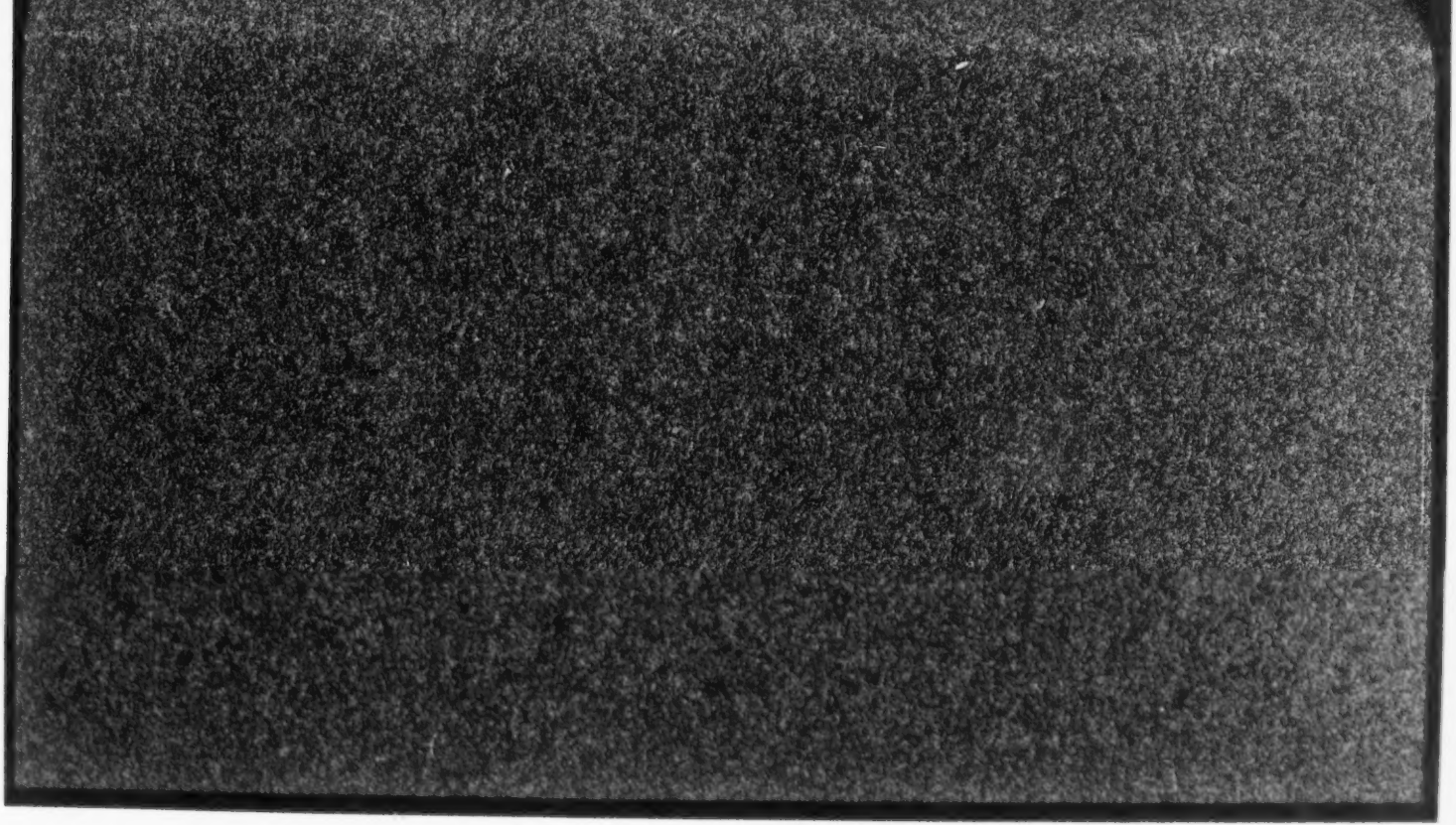
THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS,
DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE JOINT ANSWER OF THE UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, AND OREGON RAILROAD AND NAVIGATION COMPANY.

49580—22 [Filed May 4, 1908.]



In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, Defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO JOINT ANSWER OF UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, AND OREGON RAILROAD AND NAVIGATION COMPANY, THREE OF THE DEFENDANTS IN THE ABOVE ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, three of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true. All of

which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the foregoing replication this 4th day of May, A. D. 1908.

P. L. WILLIAMS,
Attorney for Union Pacific Railroad Company,
Oregon Short Line Railroad Company, and
Oregon Railroad and Navigation Company.

No. 998.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY, AND OTHERS,

DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF WILLIAM A. CLARK AND THE LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

(Filed May 2, 1890.)

40658—1

In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY; The Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, Defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF WILLIAM A. CLARK AND THE SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, TWO OF THE DEFENDANTS IN THE ABOVE-ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the San Pedro, Los Angeles & Salt Lake Railroad Company and William A. Clark, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of

which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.

PENNEL CHERRINGTON,
Attorney for San Pedro, Los Angeles & Salt Lake Rd. Co. and William A. Clark.

No. [redacted]

In the Circuit Court of the United States for the District of Utah

THE UNITED STATES OF AMERICA, Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, Defendants.

APPLICATION OF THE UNITED STATES TO THE ASSIGNEE OF THE FARMERS' LOAN & TRUST COMPANY

[redacted]

COPY BOUN

In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

No. 993, Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF THE FARMERS LOAN & TRUST COMPANY, ONE OF THE DEFENDANTS HEREIN.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that said answer of the Farmers Loan & Trust Company, one of the defendants herein, is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.

P. L. WILLIAMS,
Attorney for Farmers Loan & Trust Company.

No. 903.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

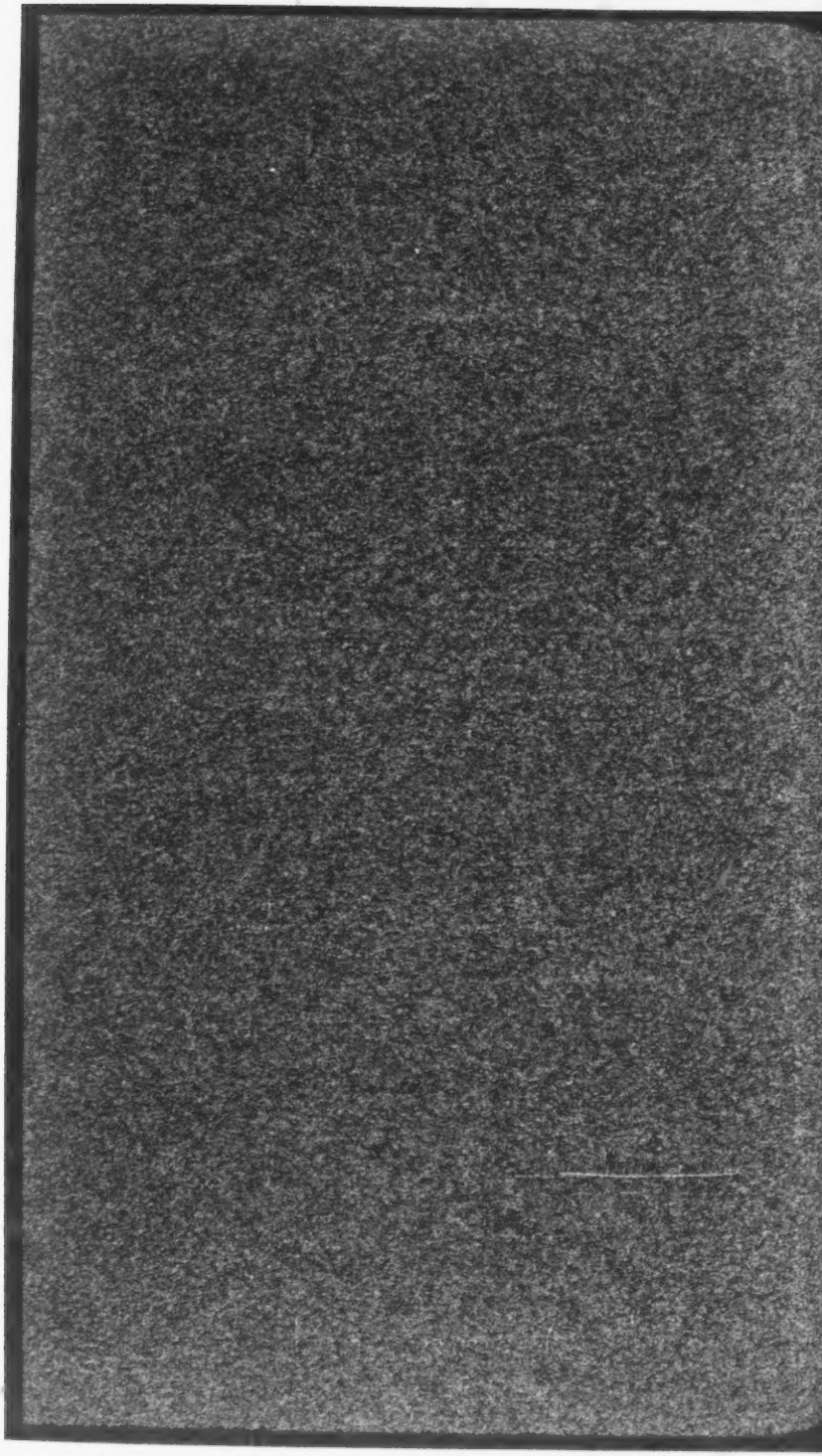
v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF HENRY C. FRICK.

[Filed May 4, 1905.]

16590—c



COPY B

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, Complainant, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF HENRY C. FRICK, ONE OF THE DEFENDANTS IN THE ABOVE ENTITLED ACTION.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Henry C. Frick, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant: without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,
Attorney for Henry C. Frick.

ND CLOSE IN CENTER

No. 965.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

(Filed May 4, 1896.)

49580—a

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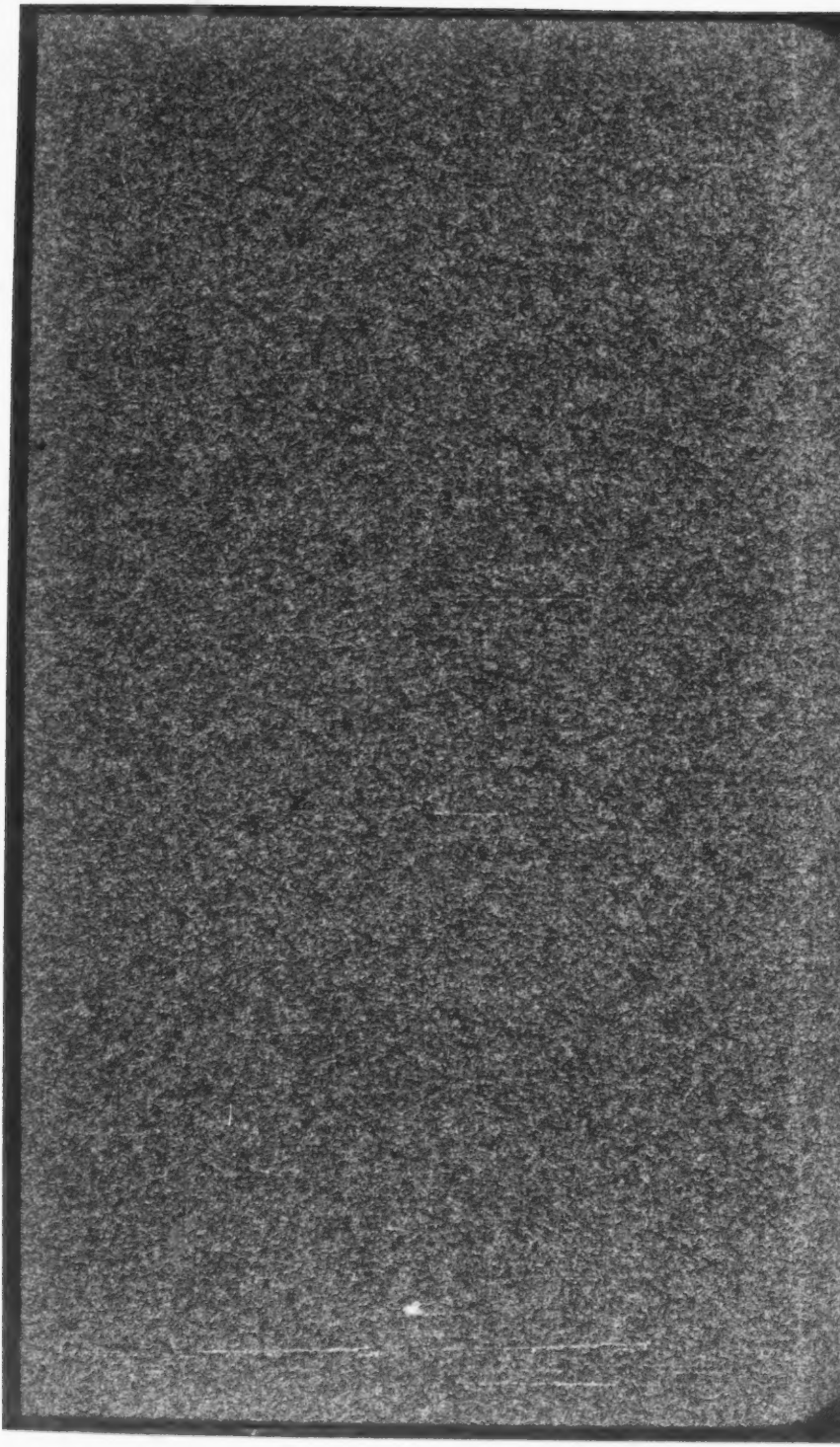


In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ONE OF THE DEFENDANTS IN THE ABOVE-ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traverse or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Atchison, Topeka & Sante Fe Railway Company.

No. 1966.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

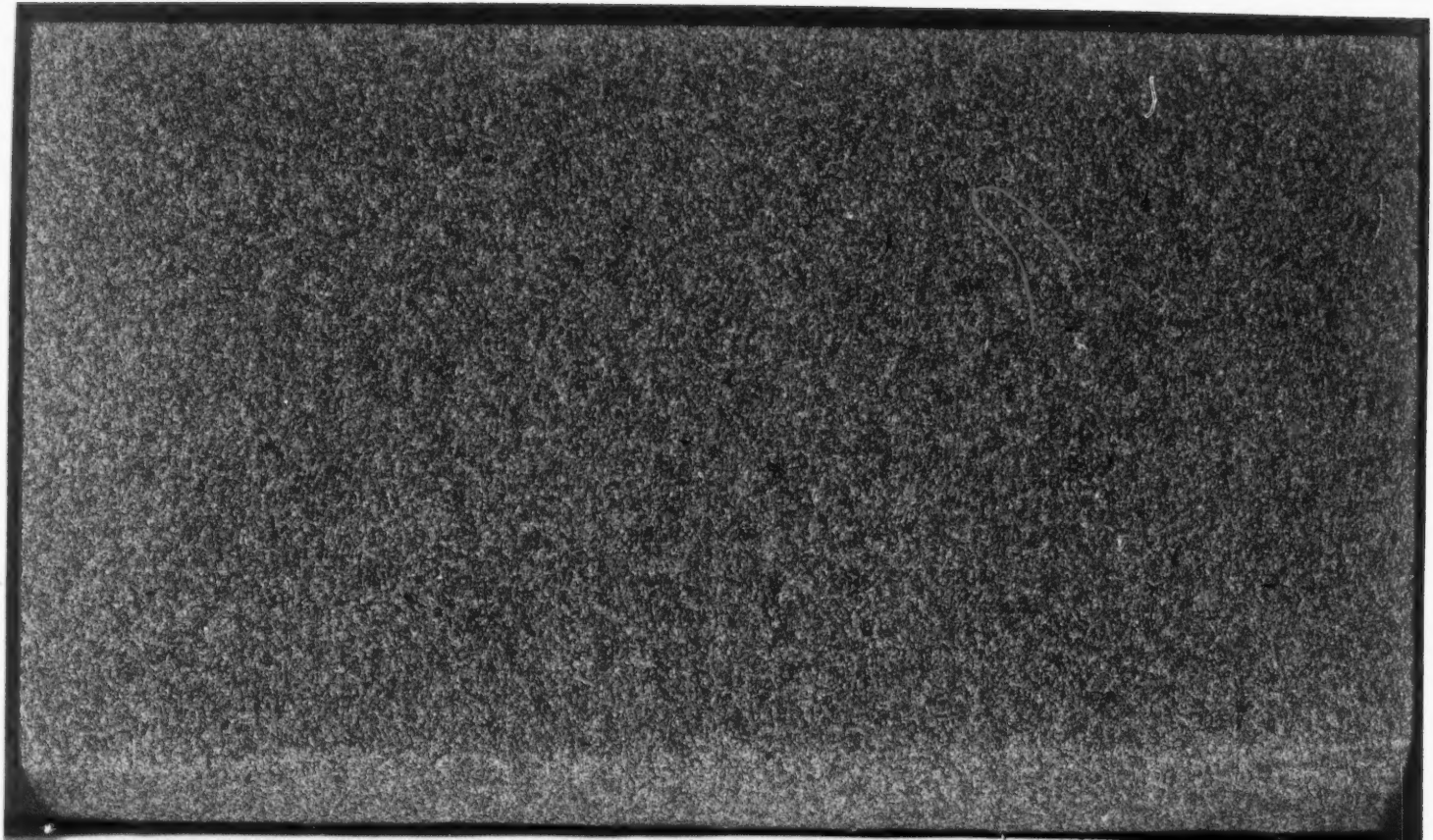
vs.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF HENRY M. ROGERS.

(Filed May 26, 1894.)

6039—a



In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF HENRY H. ROGERS, ONE OF THE DEFENDANTS IN THE ABOVE ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Henry H. Rogers, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 25th day of May, 1908.
P. L. WILLIAMS,
Attorney for Henry H. Rogers.

No. 966.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF JAMES STILLMAN.

[Filed May 25, 1906.]

In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, Defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE ANSWER OF JAMES STILLMAN, ONE OF THE DEFENDANTS IN THE ABOVE-ENTITLED ACTION.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of James Stillman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for James Stillman.

No. 893.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,

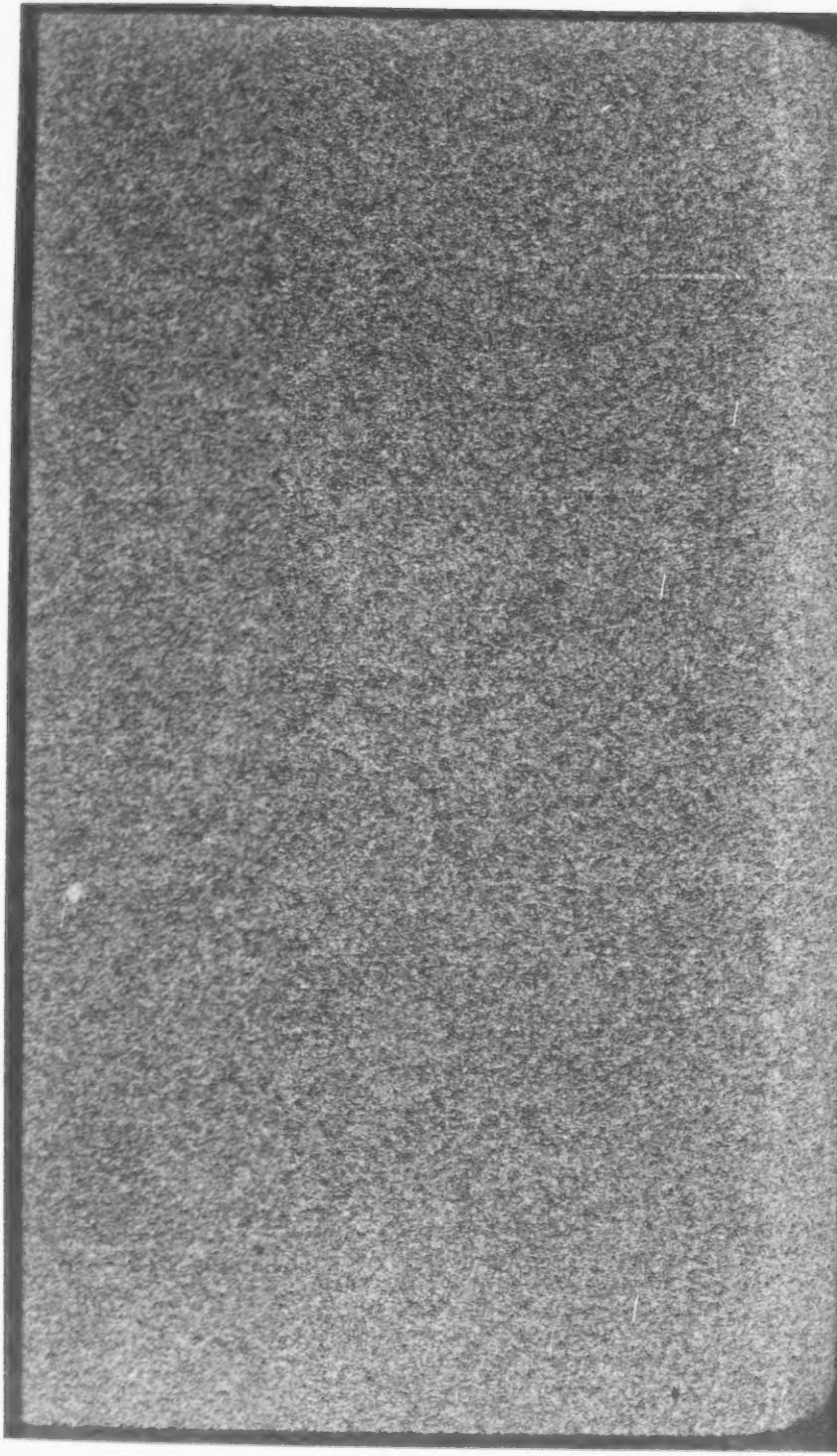
v.

THE UNION PACIFIC RAILROAD COMPANY AND OTHERS, DEFENDANTS.

REPLICATION OF THE UNITED STATES TO THE ANSWER OF JACOB H. SCHIFF AND OTTO H. KAHN.

[Filed May 25, 1908.]

49580—a



In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. Replication.

THE REPLICATION OF THE UNITED STATES OF AMERICA, COMPLAINANT, TO THE JOINT AND SEVERAL ANSWER OF JACOB H. SCHIFF AND OTTO H. KAHN, TWO OF THE DEFENDANTS IN THE ABOVE ENTITLED ACTION.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repli-

ant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.

C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for Jacob H. Schiff and Otto H. Kahn.

O

285 In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, complainant,
v.
THE UNION PACIFIC RAILROAD COMPANY; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.
} No. 933. In Equity.

Certificate and report of the special examiner.

To the honorable the judges of the Circuit Court of the United States for the District of Utah:

I, Sylvester G. Williams, special examiner in the above-entitled cause, appointed by order of court, September 11, A. D. 1908, to take and report the evidence adduced or offered by the respective parties to said cause, with full authority with full authority according to the rules and practice in such cases, do certify and respectfully report to the court as follows:

Upon the 14th and 16th days of November, 1908, the special examiner issued notices of appointment and mailed the same to the solicitors and counsel for the respective parties, a copy of said notice being filed herewith and the names and addresses of the solicitors to whom the same was addressed being appended thereto.

Upon the 14th of November, A. D. 1908, prĕcipe for notice to take petitioner's (complainant's) testimony was by the complainant filed with the special examiner and the same is filed herewith.

286 Upon November 14th, A. D. 1908, an order was duly entered by the special examiner fixing the time and place at which the examination of witnesses and taking of testimony would be begun, to wit, upon Tuesday the 1st day of December, A. D. 1908, at 10.30 o'clock a. m., at room 515, Customhouse Building, Bowling

Green, in the city of New York, State of New York; and it was further ordered that notice be given by the respective counsel or solicitors to the opposite counsel or solicitors of such time and place at least ten days before said date. The said order is filed herewith.

And upon November 14th and 16th, A. D. 1908, notice of the time and place aforesaid, with copy of said order appended, was mailed to each of the solicitors of the parties, respectively, both complainant and defendants. Copies of said notices are herewith filed.

Pursuant to the order and notices aforesaid the parties respectively appeared, by their solicitors, before the special examiner at the appointed time and place as set forth in the appearances entered by the respective solicitors and counsel in the record of proceedings hereinafter referred to and filed herewith. Thenceforth the taking of evidence proceeded and the same is set forth in the record and Transcript of Evidence and Proceedings before the Special Examiner, which is filed herewith and consists of twelve typewritten volumes, numbered 1 to 12 inclusive, and pages 1 to 8395 (including general index) also a separate volume of copies of certain exhibits, marked "Separate Volume of Exhibits," together with the various exhibits produced and offered in evidence. The exhibits are numbered and designated as Complainant's Exhibits Nos. 1 to 219, inclusive (except No. 202, for which there is no exhibit, and Complainant's Exhibits Nos. 117 and 118, which were withdrawn by consent of counsel), and Defendants' Exhibits Nos. 1 to 264, inclusive (except No. 9, for which there was no exhibit).

287 Under certain exhibit numbers there are several separate exhibits which are designated alphabetically as follows: Complainant's Exhibits Nos. 81 A to 81 K, inclusive (being 11 exhibits); Complainant's Exhibits 82 A to 82 L, inclusive (being 12 exhibits); Complainant's Exhibits 120 A to 120 D, inclusive, in addition to serial No. 120 (being 4 exhibits in addition to serial No. 120); Complainant's Exhibits 175 A to 175 C, inclusive (being 3 exhibits); Complainant's Exhibits 183 A to 183 B, inclusive (being 2 exhibits); Complainant's Exhibits Nos. 111 A to 111 O, inclusive (being 15 exhibits). There is also 1 Complainant's Exhibit No. 182½. Included in the defendants' exhibits are the following separate exhibits, designated alphabetically: Defendants' Nos. 16 A to 16 C, inclusive (being 3 exhibits); Defendants' Exhibits Nos. 45 A, "supplemental," to 45 G, "supplemental" (being 7 exhibits in addition to serial No. 45); Defendants' Exhibit 46 A, "supplemental" (being 1 exhibit in addition to serial No. 46); Defendants' Exhibit 47 A, "supplemental," and 47 B, "supplemental" (being 2 exhibits in addition to serial No. 47); Defendants' Exhibits No. 48 A, "supplemental," and 48 B, "supplemental" (being 2 exhibits in addition to serial No. 48); Defendants' Exhibits Nos. 49 A, "supplemental" and 49 B, "sup-

plemental" (being 2 exhibits in addition to serial No. 49); Defendants' Exhibits 50 A, "supplemental," and 50 B, "supplemental" (being 2 exhibits in addition to serial No. 50); Defendants' Exhibit 51 A, "supplemental" (being 1 exhibit in addition to serial No. 51); Defendants' Exhibit 52 A, "supplemental" (being 1 exhibit in addition to serial No. 52); Defendants' Exhibits 53 A, "supplemental," and 53 B, "supplemental" (being 2 exhibits in addition to serial No. 53); Defendants' Exhibit 54 A, "supplemental" (being 1 exhibit in addition to serial No. 54); Defendants' Exhibit 55 A, "supplemental" to 55 D, "supplemental" (being 4 exhibits in addition to serial No. 55). There is also 1 Defendants' Exhibit No. 244½ and 1 defendants' exhibit designated as "San Pedro, Los Angeles and Salt Lake Exhibit 1." There are in all 547 exhibits, to wit, 255 of complainant's exhibits and 292 defendants' exhibits.

288 The original exhibits are contained in various envelopes and packages with the numbers of the exhibits endorsed thereon. With such exceptions as are made the subject of special stipulation by counsel, and excepting copies of such exhibits as for convenience on account of size are bound in a separate volume of exhibits and so designated and filed, the exhibits are copied into and set forth in the order of their introduction in the written record of evidence. Wherever copies of original exhibits appear among said exhibits it was expressly stipulated and agreed by the solicitors for the respective parties that such copies might stand for and be used as the originals thereof. Certain exhibits after being copied into the record were returned to the witnesses by consent of counsel, as noted upon memoranda slips filed in place of such exhibits. The exhibits which are not printed are contained in a separate envelope without reference to serial number.

The witnesses appearing before the special examiner were before testifying duly sworn according to law, and were examined and cross-examined by counsel for the parties respectively, and their testimony was taken in shorthand by the official stenographer, and by him and under his direction transcribed and reduced to typewriting as is set forth and contained in the several volumes hereinbefore described and filed herewith.

By stipulation of counsel for the respective parties, made before the special examiner (pages 1564 and 1565 of the record) the signing of the testimony by the several witnesses was waived and it was agreed that it should be assumed that the testimony as taken by the official stenographer is correctly transcribed, unless some objection be made by counsel on either side or attention be called to some discrepancy. Such objections as were made by counsel and such corrections as were suggested were duly considered and corrections duly made to the satisfaction of counsel for both parties respectively.

As will appear from the record certain evidence was adduced under stipulation by the parties respectively from documentary and other sources, particularly from the testimony of certain wit-
289 nesses taken in proceedings before the Interstate Commerce Commission, with the same force and effect as if the witnesses were upon the stand giving the same testimony.

The taking of evidence on behalf of the complainant which was begun upon December 1st, 1908, in the city of New York, was by agreement of counsel adjourned from time to time and from place to place as is set forth in the record, evidence for the complainant being taken at the following additional places, viz: At Pittsburg, Pennsylvania; Cincinnati, Ohio; Cleveland, Ohio; Chicago, Illinois; St. Louis, Missouri; Salt Lake City, Utah; Portland, Oregon; San Francisco, California; Los Angeles, California; and the evidence in chief for said complainant was closed in the city of New York upon the 14th day of June, A. D. 1909.

And thereupon, in pursuance of notice given to opposing counsel before the special examiner by counsel for the defendants, the 14th day of July, 1909, at the city of Chicago, was fixed for the defendants to begin the taking of evidence.

Thereafter, on the 14th day of July, 1909, the parties appeared before the special examiner at the city of Chicago, Illinois, and after the taking of certain evidence an adjournment was by agreement of the parties taken until the 4th day of October, A. D. 1909.

Thereafter, upon the 1st day of September, 1909, upon application of the defendants and by agreement of the parties the date of the hearing of evidence for the defendants was postponed by order duly entered from the 4th day of October until the 1st day of November, A. D. 1909.

And thereafter upon the 23rd day of October by order of court upon motion of the defendants, the taking of evidence upon behalf of defendants was postponed from the 1st day of November until the 3rd day of January, A. D. 1910, upon condition that the defendants complete their evidence by March 19, 1910. And by subsequent order of court the time for completing defendants' evidence was ex-
290 tended until April 1, 1910.

And thereafter, to-wit, upon the 27th day of December, A. D. 1909, the parties to said cause having filed with the special examiner their agreement for the postponement of the taking of evidence for the defendants until the 17th day of January, A. D. 1910, an order was entered postponing said hearing until that date.

And thereafter, to-wit, upon the 14th day of January, A. D. 1910, upon the request of the defendants and with consent of complainant the taking of evidence upon behalf of defendants was postponed from the 17th day of January until the 1st day of February, 1910.

And thereafter, to-wit, upon January 20th, A. D. 1910, upon application of the defendants, and it appearing to the special examiner that the parties to said cause had agreed that the taking of evidence for the defendants might be resumed at a date to be fixed by the defendants, the taking of evidence for defendants was postponed until the 15th day of February, 1910.

And thereafter, to-wit, upon January 22nd, A. D. 1910, upon the application of defendants, it appearing that said application was assented to by the complainant, the order theretofore entered fixing the 15th day of February as the date for the taking of evidence for defendants was rescinded and the 1st day of February was fixed for the purpose aforesaid.

And thereafter, to-wit, upon January 26th, 1910, upon the application of defendants, it appearing that the said application was assented to by the complainant, the date for the taking of evidence for the defendants was postponed from the 1st day of February until the 15th day of February, 1910.

The several orders of postponement and of the setting and resetting of the time for hearing are set out in the record of proceedings before the special examiner herewith filed.

Upon the 15th day of February, A. D. 1910, the parties by their solicitors appeared before the special examiner at the time and
291 place appointed, in the city of New York, and the taking of evidence upon behalf of the defendants proceeded. And upon the 31st day of March, A. D. 1910, the defendants closed their taking of evidence and rested. Whereupon, pursuant to notice given to opposing counsel before the special examiner by counsel for the complainant, the 5th day of April, A. D. 1910, was fixed for the taking of evidence in rebuttal upon behalf of the complainant.

And thereafter pursuant to notice and adjournment as aforesaid, the parties respectively appeared before the special examiner upon the 5th day of April, A. D. 1910, and the taking of evidence in rebuttal was begun by the complainant and proceeded from day to day until the 9th day of April, 1910, at which day the complainant closed its evidence and rested. And thereupon the defendants rested and the taking of evidence was closed.

The transcript and record of evidence herewith filed contains all of the evidence introduced or offered before the special examiner by either of the parties to said cause.

Printing of record: Under stipulation of counsel in writing and filed in court March 2, 1909, it was agreed that the testimony taken should, from time to time, under the direction and supervision of the special examiner, be printed in the Government Printing Office in Washington in lieu of having the same printed under the rules of the Circuit Court in the district in which said suit is pending and that

the same when so printed shall be filed and used as the printed record in the Circuit Court. Pursuant to said stipulation the evidence and proceedings before the special examiner (except such portions thereof consisting of certain exhibits, chiefly maps, charts, and photographs, as by subsequent stipulation set forth in the record it was expressly agreed should not be printed) have, under the direction and supervision of the special examiner, been printed as provided in said stipulation, and the printed record is contained in eleven printed volumes numbered I to XI, inclusive, printed pages 1 to 5124, inclusive, to which appropriate volume indexes have been appended, and a general

index of witnesses and exhibits has been appended to and is
292 contained in the last printed volume.

Inasmuch as the record of evidence taken by the examiner is in such form and bulk as to make it impracticable to conveniently comply with the sixty-seventh equity rule requiring testimony to be returned into court under seal the examiner requests an order of court directing the clerk to receive, file, and publish this record when delivered to him unsealed by the examiner and properly mark the respective volumes and exhibits as filed.

Dated April 25, A. D. 1910.

Respectfully submitted.

SYLVESTER G. WILLIAMS,
Special Examiner.

Filed April 27, 1910.

JERROLD R. LETCHER, *Clerk.*

293 No. 993. In Equity.

In the Circuit Court of the United States for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, et al., defendants. } 993.

Order as to publication of proofs.

It appearing from the return of Sylvester G. Williams, Esq., special examiner herein, that the testimony and evidence taken before him in said cause is of such character and in such form and bulk as to make it impracticable conveniently to comply with the 67th equity rule requiring testimony to be returned into court under seal.

It is ordered that the special examiner be permitted to return the testimony unsealed by him, and that the clerk receive, file, and pub-

fish the same as returned and delivered by the examiner, and properly mark the respective volumes and exhibits as filed.

Dated April 25, 1910.

WILLIS VAN DEVANTER,
Circuit Judge.

Filed April 27, 1910.

JERROLD R. LETCHER, *Clerk.*

291 In the Circuit Court of the United States, District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE UNION PACIFIC RAILROAD COMPANY, defendant. } 993.

The final hearing in this cause is hereby fixed for Monday, October 10, 1910, at 10 o'clock in the forenoon, at St. Paul, Minnesota.

Dated June 6, 1910.

WILLIS VAN DEVANTER,
Circuit Judge.

Filed June 9, 1910.

JERROLD R. LETCHER, *Clerk.*

295 In the Circuit Court of the United States, District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
UNION PACIFIC RAILROAD COMPANY ET AL., DEFENDANTS. } No. 993.

Order.

Whereas the above-named defendant, Edward H. Harriman, was, as alleged in the petition and admitted in sundry answers of the above-named defendants, trustee for the Oregon Short Line Railroad Company of the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company, deposited with and held by the defendant Farmers' Loan & Trust Company, under the agreement, Exhibit B, attached to the petition; and

Whereas the said Harriman has since the commencement of this action died, and Robert S. Lovett has been duly substituted as trustee for the said Oregon Short Line Railroad Company under the said agreement, Exhibit B; and

Whereas the said Robert S. Lovett, for himself and the solicitors for the various defendants, and the solicitors for the complainant, have stipulated that said Robert S. Lovett, as such trustee, may be made a party defendant, not generally, but only as such trustee;

Now, therefore, it is ordered that Robert S. Lovett, as such trustee, be, and he is hereby, made a party defendant in the above-entitled cause; that, as stipulated by the parties, all the allegations and admissions of the bill and answers relating or in any way appertaining to the defendant Harriman as such trustee, and relating to the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company, covered by said agreement, Exhibit B, shall be applicable to the said defendant Lovett, as such trustee, without further pleading, and that all the testimony heretofore taken in said cause may be used upon the hearing for or against said defendant Lovett, as such trustee, with the same force and effect as though he had been a party defendant at the time said testimony was taken.

WALTER H. SANBORN,
U. S. Circuit Judge.

ST. PAUL, MINNESOTA, *September 20, 1910.*

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296 In the United States Circuit Court for the District of Utah.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. In equity.

Mr. Frank B. Kellogg and Mr. Cordenio A. Severance (Mr. George W. Wickersham, Attorney General, was on the brief), for complainant.

Mr. N. H. Loomis, Mr. P. F. Dunne, and Mr. T. D. Watson (Mr. H. F. Stambaugh and Mr. John M. Freeman were on the brief), for defendants.

Before SANBORN, VAN DEVANTER, HOOK, and ADAMS, Circuit Judges.

This suit is grounded upon the anti-trust law of Congress approved July 2, 1890 (26 Stat., 209), to dissolve an alleged contract, combination, or conspiracy in restraint and monopoly of interstate and foreign trade between the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company on the one hand, and the Southern Pacific Company, the Northern Pacific Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company on the other hand.

Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, through whom it is averred the combination was created or is maintained, are also made defendants.

The specific charges are: That in 1901 and subsequently, the Union Pacific Company acting by itself or through a subsidiary corporation owned and controlled by it, acquired a controlling interest in the capital stock of the Southern Pacific Company for the purpose of directing its operations and suppressing competition theretofore existing between the two in interstate and foreign commerce and monopolizing the same; that in the same year it, with like purpose acquired a majority of all the stock of the Northern Pacific Railway Company; and subsequently induced the San Pedro, Los Angeles & Salt Lake Railroad Company and its promoters, the defendant, William A. Clark and his associates, to desist from constructing an independent line of railroad between San Pedro, California, and Salt Lake City, Utah; that in 1904 the defendants, Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, purchased stock of the Atchison, Topeka & Santa Fe Railway Company of the face value of
298 $30,000,000.00 and thereby secured the election of Frick and Rogers, who were directors of the Union Pacific Company, as members of the board of directors of the Santa Fe Company, and later, in the year 1906, the Union Pacific Company, through the Oregon Short Line, purchased stock of the Santa Fe Company of the face value of $10,000,000.00, and that these purchases were so made for the purpose of eliminating competition of the Santa Fe Company and monopolizing for the Union Pacific Company interstate and foreign commerce. These and some other minor charges, which will be referred to later, are relied upon to establish conspiracies in violation of the act.

The prayer is that the defendants who purchased the stocks be enjoined from voting or otherwise acting as owner of them and the other corporate defendants be enjoined from permitting them to vote the stocks or paying dividends upon the same and for general relief.

The answer puts in issue all the material averments of the bill and the cause is submitted to the court for a final decree on the pleadings and proof.

The essential facts are these:

Prior to 1901 the Union Pacific Company owned and operated a main line of railroad extending from Omaha on the east to Ogden on the west with a branch extending from Kansas City on the east through Denver to a connection with its main line at Cheyenne; owned the capital stock of the Oregon Short Line Company, which operated a railroad extending from the main line at Granger, Wyoming, to Huntington, Oregon; and owned or controlled the capital stock of the Oregon Railroad & Navigation Company, which operated a line of railway extending from Huntington to Portland, where it connected with lines of steamships operated by it running to
299 some Oriental ports and to San Francisco. The steamship line across the sea had just been organized and had not engaged in business until 1900 or 1901. It was neither organized nor equipped for general traffic but only for transporting grain and flour originating on the line of the Oregon Railroad & Navigation Company in competition with the Northern Pacific and Great Northern Railroads. Its sailings were scheduled every thirty days, but were in fact, irregular and uncertain. The tonnage of Oriental traffic over this line was infinitesimal compared to the total tonnage of the system, being only 83/1000 of one per cent of it. The steamship line from Portland to San Francisco was likewise an inadequate provision for any regular traffic, and particularly transcontinental traffic. Its sailings were irregular and unreliable; so that the Union Pacific Company had under its ownership, or control through subsidiary lines, a transportation route, as just described, from Omaha and Kansas City to some Oriental ports and to San Francisco, by way of Portland.

The Union Pacific had connections at Omaha with the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Chicago, Burlington & Quincy, and other railways leading to Chicago and connecting at that point with many, if not all, the great trunk lines leading to New York and intervening points. It also had connections at Kansas City with the Missouri Pacific, Wabash, Chicago & Alton and other railways leading to St. Louis, and connecting there with trunk lines extending to New York and intervening points. It also had divers important feeding in or branch lines along its route.

In 1901 the Southern Pacific Company owned or controlled a line of steamships operating between New York and New Orleans
300 and a line of railway extending from New Orleans, through Louisiana, Texas, New Mexico, Arizona, and California, to

San Francisco and thence through Oregon to Portland, with several branch lines along its route extending into tributary territory. It also owned all the capital stock of the Central Pacific Railroad Company, which owned the line of railway extending between San Francisco and Ogden, and had a majority of the stock of the Pacific Mail and Steamship Company, which operated lines of steamships between San Francisco to and from Panama and oriental ports, so that the Southern Pacific Company had a transportation route over land and sea extending from New York, via San Francisco, to two terminal points—Ogden, Utah, and Portland, Oregon. It also connected at New Orleans with the Illinois Central, Louisville & Nashville, Queen & Crescent, and other roads, which opened up to it the traffic of the Middle States, and owned a line of railway extending from New Orleans to Fort Worth, Texas, and to connections there with roads leading to Colorado and Utah common points.

The Atchison, Topeka & Santa Fe Railway Company in 1901 owned or controlled a main line of railway extending from Chicago, through Illinois, Missouri, Kansas, Colorado, New Mexico, Arizona, and California, to San Francisco.

The Northern Pacific Railway Company in 1901 owned a line of railway extending from Lake Superior and St. Paul, through Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, to Seattle and the Pacific coast and, through ownership of a controlling interest in the capital stock of the Chicago, Burlington & Quincy Railroad Company, which operated lines of road in Minnesota, South Dakota, Iowa, Illinois, Wisconsin, Missouri, Nebraska, Kansas, California, and Wyoming, it controlled the transportation of that company. The last-named company connected at several points
301 with the Union Pacific and was a natural and important feeder for it.

The San Pedro, Los Angeles & Salt Lake Railroad Company was organized in 1902 for the purpose of constructing a line of railway extending from San Pedro, California, across the States of California and Nevada in a northwesterly course to Salt Lake City.

From El Paso, Texas, on the Southern Pacific line, the Texas & Pacific Railroad ran across the State of Texas to Texaskana and there connected with the rails of the St. Louis, Iron Mountain & Southern Railroad, which extended to St. Louis. At St. Louis the last-named road connected with the Wabash for the East and the Missouri Pacific for Pueblo, Colorado, and there connected with the Denver & Rio Grande Railroad, which ran to Ogden. These last-mentioned roads constituted what is known as the Gould system, and, operating under one general management, swung around from a point on the Southern Pacific at El Paso to another point on the

Southern Pacific at Ogden. The last-named company constituted its only connection into California and afforded its only opportunity for participation in transcontinental business.

In 1898 the Union Pacific Company, which had been in the hands of a receiver since 1893, was reorganized and Mr. Harriman and his associates came into control. They soon adopted and put into execution plans of a stupendous character for the rehabilitation and reconstruction of the road, involving an expenditure of many millions of dollars. Apart from possible rights conferred by the acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1864 (18 Stat., 111), known as the Pacific Railroad acts, the Union Pacific Company had no independent right of cooperation by through route or joint rates with the Southern
302 Pacific for the Pacific coast trade, and, in fact, no other direct connection was open to it for that trade except the Southern Pacific Road itself. The Rio Grande and its allied lines and connections, with trunk lines from the East at St. Louis, was available to the Southern Pacific as a connection at Ogden for business for the Atlantic seaboard and Middle States. To meet a menace occasioned by this situation and secure a reliable and permanent arrangement for Pacific coast business, Mr. Harriman, acting for the Union Pacific Company, first tried to purchase from the Southern Pacific Company the old Central Pacific line extending between Ogden and San Francisco, and, failing in this, entered into negotiations with C. P. Huntington in his lifetime for the purchase of a large block of the capital stock of that company owned by him. Being unsuccessful in this, he renewed his efforts to secure that stock from Mr. Huntington's heirs and devisees after his death, in 1900. In this effort he had a competitor in George Gould, acting for the Gould interests. It resulted, in 1901 or 1902, in the purchase for the Union Pacific Company of nine hundred thousand shares, and these, with the shares of some preferred stock afterwards issued and taken by it, made a holding of a little over forty-six per cent of the total outstanding issue of Southern Pacific stock. This was a holding sufficient, according to the usual conduct of corporate affairs, to insure to the Union Pacific Company control in the management of the Southern Pacific Company.

In 1901 the Northern Pacific Company acquired a controlling interest in the Chicago, Burlington & Quincy Railroad, which was a natural and actual feeder to the Union Pacific Company. After an unsuccessful effort to secure from Mr. Hill, who acted for the Northern Pacific Company, a partial interest in that purchase in order
303 to insure a continuation of the fair and equitable relations which had theretofore existed between the Union Pacific and the Burlington roads, Mr. Harriman purchased for the Union Pacific

Company a majority of the capital stock of the Northern Pacific Company, including in his purchase more of the preferred than of the common stock. The preferred, by action of the board of directors of the latter company, was soon retired. The Northern Securities Company was afterwards organized and the common stock transferred to it. Upon its dissolution in 1905 the Union Pacific Company was required to accept a part of the stock of the Great Northern Railway Company in lieu of some of its former holdings in the common stock of the Northern Pacific Company (Harriman v. Northern Securities Co., 197 U. S., 244). If the Union Pacific Company acquired any controlling or influential interest in the management of the Northern Pacific Company, these things resulted in the loss thereof. Finally, in the years 1908 and 1909 holdings of the Union Pacific Company in Northern Pacific or Great Northern stock entirely ceased.

In 1904 the defendants Harriman, Rogers, Stillman, Frick, Kahn, and Schiff purchased for themselves as individuals $30,000,000.00 in par value of the common stock of the Atchison, Topeka & Santa Fe Railway Company, and later, in 1906, the Union Pacific Company invested $10,000,000.00 of its idle money in the preferred stock of that company. The individuals who purchased and owned the common stock secured the election of two of their syndicate, the defendants Frick and Rogers, as members of the board of directors of the Santa Fe Company. They were at that time also members of the board of directors of the Union Pacific Company. The holding of the last-mentioned company of $10,000,000.00 in the preferred stock of the Santa Fe Company was about five per cent of the
304 total outstanding stock of the latter company. This was all disposed of in 1909.

Some time after the acquisition by the Union Pacific Company of the Southern Pacific stock, the latter company became involved in a controversy with the Phoenix & Eastern Railroad Company, the owners of a short line of road in Arizona. Litigation ensued and resulted in the sale of the Phoenix & Eastern Railroad to the Southern Pacific Company. About that time there was a consolidation of a short line of road (about ninety miles) in the northwestern part of California with the Southern Railway Company. This consolidation was made pursuant to the laws of the State of California.

Prior to 1890 the Union Pacific Company through its subsidiary company, the Oregon Short Line, constructed a line of railroad extending from Salt Lake City in a southwesterly direction to Milford, a point near the State line between Utah and Nevada, a distance of about 206 miles, and plans were made for an extension of the road further southwesterly and ultimately to Los Angeles. Grading had been done at a heavy cost on this extension for a further distance of

117 miles, a part of the way being through a rugged and narrow defile in the mountain, when, on account of financial embarrassments culminating in the receivership of the Union Pacific and Oregon Short Line companies, work had to be abandoned. In the meantime a tax deed purporting to convey title to the graded road had been secured by defendant Clark and his associates, who sought to construct a part of a line of railway projected by them between Salt Lake City and Los Angeles, over it. This provoked proceedings in the Land Department and courts by the Oregon Short Line to assert its rights, which resulted favorably to its contention (Utah N. & C. R. Co. v. Utah & C. Ry. Co., 110 Fed., 879).

305 Pending subsequent controversies between the parties, an adjustment was reached whereby the two promoters, the Oregon Short Line and the Clark interests, proceeded jointly to construct and operate a single line, each taking one-half interest in the stock of the San Pedro, Los Angeles & Salt Lake Company, which owned and operated it. It was not completed and no commerce passed over it until 1905. In the further adjustment of their differences certain permanent provisions relating to joint, through, and local rates were made favorable to the interests of the Union Pacific Company and its allied roads as a system.

Prior to 1901 agents of the Union Pacific, Southern Pacific, and Santa Fe roads were actively engaged in New York and elsewhere in securing business between New York, Pittsburgh, and interior points to the Pacific coast.

The Union Pacific Company, having no through route, had to depend upon connections with other roads at either end of its line and to share with them the revenue resulting from the traffic secured in such proportions that out of the through rate it received but a minor part. For instance, on traffic from New York to

San Francisco via Omaha and Ogden it received of the through rate only ..... 31.4 %
Its connections east of Omaha received ..... 35.5 %
And the Southern Pacific from Ogden to destination received ..... 30.1 %
On traffic from New York to San Francisco via Kansas City and Ogden it received of the through rate only ..... 30.5 %
Its connections east of Kansas City received ..... 38.6 %
306 And the Southern Pacific from Ogden to destination received ..... 30.9 %
On traffic from Cincinnati to San Francisco via Omaha and Ogden it received ..... 19.4 %
Its connections east of Omaha received ..... 24.4 %
And the Southern Pacific from Ogden to destination received ..... 35. 2 %
On traffic from Chicago to San Francisco via Kansas City and Ogden it received of the through rate only ..... 43.6 %
Its connections east of Kansas City received ..... 14.2 %
And the Southern Pacific from Ogden to destination received ..... 42.2 %

From these fairly illustrative instances it appears that on transcontinental traffic from New York and important interior points by way of the Union Pacific road to San Francisco the connections of the last-mentioned road on both ends received practically two-thirds of the total freight rate, the Southern Pacific itself receiving about the same proportion of it as the Union Pacific did.

On the other hand, the Southern Pacific received on freight from New York common points to San Francisco, by way of New Orleans, on its own route, all the through rate, and on freight from Cincinnati, Chicago, and other interior points to San Francisco, via New Orleans, the total through rate less the small portion required by the initial carriers for transportation from point of origin to New Orleans.

307 Many witnesses testified generally that the Union Pacific and Southern Pacific were, prior to 1901, competing lines for transcontinental business and had separate soliciting agents in New York and elsewhere. The proof amply shows that they were active in securing routings of freight and passengers to California, but that they did it in two ways—one by direct solicitation of shippers and passengers and the other by securing and fostering friendly relations with the initial carriers at the points of origin of the traffic. The initial carrier commonly was able to and did determine the routing of all traffic. Notwithstanding the right of the shipper in the abstract to do so, the initial carrier practically settled the question so as best to serve its own interest.

In so far, however, as the initial carrier was influenced by the shippers and they by the soliciting agents the result was this: As between the Southern Pacific and the Union Pacific the agents of the former exercised their influence in favor of their through route by way of New Orleans, but as between the Union Pacific and the Santa Fe the agents of the Southern Pacific exercised their influence in favor of the Union Pacific route, as it thereby secured for itself a haul of eight hundred miles over its own road from Ogden to San Francisco, the last connecting link into California.

The actuating intent and purpose of the Union Pacific Company in acquiring the Huntington stock was to secure a permanent and reliable connection at Ogden for through traffic over the Central Pacific line to the Pacific coast, and thereby to save the necessity of constructing a road of its own from Ogden to San Francisco.

308 The facts relating to less important competition: (1) Between the Atlantic seaboard and interior points on the one hand and Portland, Oregon, on the other; (2) between the Atlantic seaboard and Colorado and Utah common points; (3) between Portland and Utah, Colorado and Nevada common points; (4) between

San Francisco and Portland; (5) between San Francisco and Montana and Idaho common points; and (6) between New York and interior common points and the Orient will be specifically referred to so far as necessary in the opinion.

ADAMS, Circuit Judge, after making the foregoing statement, delivered the opinion of the court.

To bring any transaction within the condemnation of the first section of the antitrust law it must be a contract, combination, or conspiracy in restraint of interstate or international commerce. This restraint must be substantial in character and the direct and immediate effect of the transaction complained of. (Addyston Pipe and Steel Co. v. United States, 175 U. S., 211, and cases cited.)

The most important feature of the complaint in this case and the one chiefly relied upon by counsel for the Government in support of their contentions is the purchase in 1901 by the Union Pacific Company of a controlling interest in the capital stock of the Southern Pacific Company. Its consequences are alleged to have been the destruction or restriction of free competition in transcontinental commerce. Whether such consequences followed depends upon whether these companies were or could have been independent and substantial competitors before the transaction in question occurred.
309 (Kimball v. Atchison T. & S. F. R. Co., 46 Fed., 888.)

Most obviously if they were not and could not then have been such competitors the securing of control of both by one did not destroy or stifle competition. (Northern Securities Co. v. United States, 193 U. S., 197, 331.)

The question then is: Was the line of the Union Pacific Company, extending only from Omaha and Kansas City on the east to Ogden on the west, a competing line prior to 1901 for transcontinental business with the Southern Pacific Company, whose line extended from New York on the east over the sea to New Orleans and thence by rail to San Francisco and Portland on the west?

The question is not whether it constituted a continuous line over which traffic might possibly be moved from the Atlantic seaboard or interior to the Pacific coast, but whether it constituted a feasible route over which it could enter naturally and profitably into competition with the Southern Pacific route for that traffic. Claim is not made that it was such a competitor for any business originating on or near to its main line, but only for business originating in New York or Pittsburgh common points, a thousand or more miles away from its line.

Its traffic between New York and interior points on the one hand and Portland, Oregon, on the other was of trifling importance, amounting for the fiscal year preceding the purchase of the Huntington stock to only 0.46 per cent of its total tonnage. Accordingly,

its competitive relation to the Southern Pacific route with respect to traffic in and out of San Francisco, the chief gateway for transcontinental business, will first be considered.

310 It had a connection at Granger with its subsidiary lines, the Oregon Short Line and the Oregon Railroad & Navigation Line, extending to Portland, and there with a line of steamboats irregularly and infrequently running between that port and San Francisco. But this detour through Portland and over the sea was long, unreliable, and unsatisfactory, and afforded no opportunity for fair and remunerative competition with the Southern Pacific for San Francisco trade. It was about 1,700 miles in length as against 800 miles in direct line from Ogden to San Francisco. In fact, prior to 1901 it had never been employed in any substantial way as an outlet for the Union Pacific's west-bound freight into San Francisco. It is inconceivable, therefore, that the Huntington stock was purchased to prevent, or had the effect of preventing in any substantial way, free competition with so devious and impracticable a route. We shall accordingly dismiss it from further consideration, so far as transcontinental business is concerned, and pass to the important question upon which argument was concentrated: whether the right, privilege, or practice, whatever it may have been, of connecting with the rails of the Southern Pacific at Ogden and of using that company's line between Ogden and San Francisco, together with the right, privilege, or practice of connecting at Omaha and Kansas City with the lines of other railroads, which by themselves and by successive connections led to the points of origin of the traffic, constituted the Union Pacific a competitor of the Southern Pacific for that traffic.

It is certain that Union Pacific by itself could do none of that business. It extended neither to its origin nor destination. It depended for success upon its connections with other railroads at the east and with its alleged competitor at the west end of its own line.

311 Prior to the enactment of the provisions of the fifteenth section of the act of June 29, 1906 (34 Stat., part 1, p. 590), known as the Hepburn Act, there was no way of coercing railroad companies into establishing through routes or joint rates with each other.

In Southern Pacific v. Interstate Com. Com. (200 U. S., 536, 553), the Supreme Court, speaking of a time antedating the Hepburn Act, said: "It is conceded that the different railroads forming a continuous line of road are free to adopt or refuse to adopt joint through tariff rates. The commerce act recognizes such right and provides for the filing, with the commission, of the through tariff rates, as

agreed upon between the companies. The whole question of joint through tariff rates, *under* the provisions of the act, is one of agreement between the companies, and they may, or may not, enter into it, as they may think their interests demand. And it is equally plain that an initial carrier may agree upon joint through rates with one or several connecting carriers, who between each other might be regarded as competing roads. It is also undoubted that the common carrier need not contract to carry beyond its own line, but may there deliver to the next succeeding carrier and thus end its responsibility, and charge its local rate for the transportation. If it agree to transport beyond its own line, it may do so by such lines as it chooses."

Whether, therefore, the great eastern lines and their connections which gathered up the west-bound freight should favor the Union Pacific, the Southern Pacific, or the Santa Fe routes as their final connection into San Francisco was optional with them. If they favored the Union Pacific, the terms of their arrangement,
312 whether for a reasonable participation by each in the through rate, or on the basis of local rates for the service of each, or otherwise, were not within the power of the Union Pacific itself to determine or of the courts in the absence of legislative authority to enforce. If perchance the Union Pacific had for a time a voluntary arrangement with the Chicago, Milwaukee and St. Paul, the Michigan Central, and the New York Central for a through route and joint rates on traffic destined from New York common points to Ogden and thence to San Francisco, can it be true that that fact by itself would have constituted the Michigan Central a competitor of the Southern Pacific for that traffic within the intent and meaning of the anti-trust law? If not it does not seem to us that the Union Pacific Company, another intermediate link, like it, in the same temporary through route, could have been such a competitor. But we do not rest our conclusion on this feature of the case alone.

In view of the fact that the Southern Pacific owned and operated the road from Ogden to San Francisco, with which alone (except for the circuitous and impracticable route via Portland and the sea to San Francisco) the Union Pacific could have connected and over which alone it could have carried its traffic into San Francisco, we are unable to understand how the Union Pacific could have been an independent competitor with the Southern Pacific for business over that route into San Francisco.

While the Union Pacific was entirely dependent upon the Southern Pacific for its connection westward the Southern Pacific was not at all dependent upon the Union Pacific for its connection eastward. The Denver and Rio Grande Company and its allied lines under one control had a through route extending from Ogden through
313 Denver, Kansas City, St. Louis to Chicago and other interior

points, and thence by many available connections to New York and the seaboard. This was obviously a most attractive and powerful rival of the Union Pacific Company and a constant menace to its success. The latter was in no position to coerce any action by the Southern Pacific. Its hands were tied. But, it is argued, it could retaliate by using its influence to induce initial carriers or shippers to route transcontinental freight by way of Portland and the sea to San Francisco. This being such a long and unreliable route, little success could have been reasonably expected in such retaliation. If the Rio Grande should have been favored by the Southern Pacific as its eastern connection, the Union Pacific, in the language of the witnesses, would have been practically bottled up at Ogden.

With the advantage possessed by the Southern Pacific as an initial carrier to deflect all east-bound traffic to another line at Ogden and with the right to exact on all east or west bound traffic local rates instead of a fair and just proportion of an established through rate, the Southern Pacific would easily have put a quick and decisive ending to any hostile rivalry or competition if such had been hazarded by the Union Pacific. This absolute dependence by the latter upon the Southern Pacific for a distance of eight hundred miles of its only through route, to say nothing of its dependence upon the voluntary action of its eastern connections already points out, in our opinion, rendered any equal or profitable competition between them impossible. No real rivalry in the nature of things could have subsisted as long as the success of one was dependent upon the consent or favor of the other. Instead of the situation being competitive the
311 two roads really acted together and cooperated between themselves and with their connections in securing as much of the transcontinental traffic, each for the other, according to their respective facilities as they could get; and participated in the total revenue on a basis of comparative service rendered. Their relations were like those of a limited partnership rather than those of hostile competitorship.

But it is said the Pacific Railroad acts (supra) obligated the Union Pacific and Central Pacific (the predecessor in right of the Southern Pacific so far as the road from Ogden to San Francisco is concerned) to the establishment of through routes and maintenances of joint rates and take these roads out of the operation of the rule announced in the case of Southern Pacific Company v. Interstate Com. Com. (supra).

But we do not so interpret them. Those acts required the two roads, the one from Ogden east to Omaha and Kansas City and the other from Ogden west to San Francisco, or their predecessors, to be "operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned,

as one continuous line" (sec. 12, act July, 1862, 12 Stat., 495), and also required them in such operation and use "to afford and secure to each equal advantages and facilities as to rates, time, transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others * * *" (section 15, act July 2, 1864, 13 Stat., 362).

The act of 1862 not only provided for the continuous operation of the roads but empowered them to consolidate (sec. 16), and so
315 likewise did the act of 1864 (sec. 16). These acts were obviously intended to secure a permanent physical connection between the roads and to provide generally for equal accommodations to the public on the basis of independent carriers. But we discover in them no provisions or machinery by which the Southern Pacific as successor to one of them could have been compelled by the courts or otherwise to make agreements governing interchange of traffic or through rates or fixing the division of such through rates between the two roads.

Sec. 15 of the act of 1864 is not substantially different, so far as the matter under consideration is concerned, from sec. 3 of the interstate commerce act of 1887 (24 Stat., 380). They both forbid discrimination in rates between connecting lines. Sec. 3 has been held by the Interstate Commerce Commission and by the court of appeals of this circuit not to invest the commission or the courts with power to compel carriers to make contracts or agreements for through billing of freight or for joint rates. On the contrary, it was held that such matters are left to the voluntary determination of the interested carriers. (L. R. & Mem. R. R. Co. v. E. Tenn. &c. Co., 3 I. C. C. Rep., 1; Little Rock & M. R. Co. v. St. Louis & S. W. Ry. Co., 63 Fed., 775. See also the same effect Oregon Short Line &c. v. Northern Pacific R. Co., 51 Fed., 465, 474, and Chicago & N. W. Ry. Co. v. Osborne, 52 Fed., 912, 914.)

The voluminous evidence of officers, agents, and shippers to the effect that active competition existed between the Union Pacific and Southern Pacific roads prior to 1901 must be considered in the light of the legal and physical relations of the roads to each other and of other related facts. Whether there was competition or not, in
316 view of all these things, was a mixed question of law and fact and not susceptible of determination by the preponderance of proof as an issue of fact only. Without doubt there was active competition, but it was chiefly in cooperation with initial lines which had the routings of freight and for the benefit of such initial lines and their connections to Omaha or Kansas City, as well as for the benefit of the Union Pacific Company itself. Even so far as it was for the

benefit of the latter company it operated necessarily for the benefit of the Southern Pacific to an extent of about eight-twentieths of the haul after the Union Pacific took it at Omaha or Kansas City.

In this condition of things the opinion of any number of witnesses as to whether the two were competing lines within the meaning of the law is of little aid, and the general statement of those witnesses that the two roads had separate soliciting agents throws little if any light upon the ultimate issue.

The immediate and actuating intent and purpose of the Union Pacific Company in acquiring the Huntington stock and thereby the control of the operations of the Southern Pacific line were, according to the proof, to secure a permanent working and reliable connection at Ogden over an existing road for its through traffic, a connection not dependent upon the grace of a dominant copartner but one within its own control.

We recognize the proposition that if the necessary and direct result of the purchase of the Huntington stock was to destroy or substantially suppress free and natural competition, before then existing between the two companies, or if that purchase put it within
317 the power of the Union Pacific Company to destroy or suppress such competition, the latter named Company would undoubtedly be held to have intended the natural and reasonable consequences of its act and notwithstanding the dominant purpose just mentioned, would have violated the anti-trust law. (Addyston Pipe and Steel Co. v. United States, 175 U. S., 211, 234; Northern Securities Co. v. United States, 193 U. S., 197, 328, 332, 357.)

Our conclusion is that all the facts of this case considered in their natural, reasonable, and practical aspect and given their appropriate relative signification do not make the Union Pacific a substantial competitor of transcontinental business with the Southern Pacific in or prior to the year 1901.

We therefore pass to a consideration of some less important matters relied upon by the Government to establish destruction of competition between those companies.

It is contended that it was destroyed or suppressed in transcontinental business between the Atlantic seaboard and middle States on the one hand and the Portland and Willamette Valley common points on the other hand. The route of the Southern Pacific for this business was by its own line via New Orleans and San Francisco to Portland, and that of the Union Pacific was by its own line from Omaha and Kansas City to Ogden, together with its connections and subconnections eastward from Omaha and Kansas City, and its subsidiary lines, the Oregon Short Line and Oregon Railroad & Navigation Company running northwesterly into Portland and the valley. The geographical relation of these routes to each other and the dependence

of one of them, at least, upon voluntary arrangements with other lines would seem to render natural and fair competition between them for the Portland trade impossible, but the slight volume
318 of the traffic here involved affords a controlling and decisive consideration. For the year ending June 30, 1900, the tonnage of the Southern Pacific Company in this trade was only 0.10 per cent of its total tonnage. For the same year the tonnage of the Union Pacific Company in this trade was only 0.46 per cent of its total tonnage. Again it is contended that the control of the Southern Pacific Company acquired by the Union Pacific Company suppressed free competition between them for business between the Atlantic seaboard and Colorado and Utah common points. The route of the Southern Pacific available for this traffic was from New York to New Orleans or Galveston by sea, thence over its own line to Fort Worth, Texas; thence over its connection, the Colorado and Southern, to Denver; thence over another connection, the Denver and Rio Grande, into Utah.

The route of the Union Pacific Company available for it was its own line from Kansas City and Omaha to Denver and Ogden, with its numerous initial connections and subconnections; and also a line by sea from New York to Newport News and Savannah, thence by connection at those places with such railroads as would favor them through the interior of the country to the beginning of its own rails at Kansas City and Omaha.

Physically and practically speaking, in view of the circuity of the route of the Southern Pacific and of the necessary dependence of both companies upon volunteer connections, real rivalry between them for this traffic does not seem to have been possible; but here, again, the traffic itself was of little volume and comparatively unimportant.

For the year ending January 30, 1900, the tonnage of the Southern Pacific in this business was only 0.19 per cent of its total ton-
319 nage. For the same year the tonnage of the Union Pacific in this traffic was only 0.47 per cent of its total tonnage.

A like contention is made concerning the traffic between San Francisco, on the one hand, and Portland and points in the Willamette Valley, on the other hand, but this traffic was also small. For the year ending June 30, 1901, the tonnage of the Southern Pacific in this traffic was only 0.36 per cent of its total tonnage, and the tonnage of the Union Pacific Company in it for the same period was only 1.27 per cent of its total tonnage.

A similar contention is made concerning the traffic from Portland and Willamette Valley common points on the one hand and Ogden and its common points on the other. The route of the Southern Pacific Company for this business was by the so-called Shasta route from Portland to Sacramento and thence via the old Central Pa-

cific route to Ogden. This was a long and circuitous route compared to that of the Union Pacific Company from Portland via Oregon Railroad & Navigation Company and the Oregon Short Line to Ogden. Not only is this so, but the business was comparatively trifling. For the year ending June 30, 1901, the tonnage of the Southern Pacific in it was only 0.01 per cent of its total tonnage, while that of the Union Pacific was only 0.35 per cent of its total tonnage.

A like contention is made concerning traffic from San Francisco, on the one hand, and points in Montana, Idaho, eastern Oregon, and Washington, on the other hand. Without commenting upon the uncompetitive character of those routes for this business, it suffices to call attention to the insignificance of the traffic itself. For the year ending June 30, 1900, the tonnage of the Southern Pacific
320 Company in it was only 0.02 per cent of its total tonnage, while that of the Union Pacific Company for the same time was only 0.23 per cent of its total tonnage.

Claim is also made that the control which the Union Pacific Company acquired by the purchase of the Huntington stock suppressed free competition between them for the oriental traffic. Many considerations arising out of the relations of the two roads to the trans-Pacific steamship lines which carried the traffic from the coast have conduced to the conclusion reached; but bearing in mind that we are not considering this case in view of the present oriental traffic but in view of what it was ten years ago when the transaction complained of occurred, we find adequate reason for it in the small amount of this business also. For the year ending January 30, 1901, the tonnage of the Southern Pacific in handling it was only 0.20 per cent of its total tonnage, while that of the Union Pacific, both through San Francisco and Portland gateways, was only 0.41 per cent of its total tonnage.

The aggregate of all the business done by the Union Pacific and Southern Pacific Companies over all these routes for the years specified, which we believe fairly represents the general conditions prevailing at or before the Huntington stock was purchased, was, for the Southern Pacific Company, 0.88 per cent of the entire tonnage of that system, and for the Union Pacific Company 3.10 per cent of its aggregate tonnage. Tables in evidence also disclose that the total revenue derived from the traffic over these minor routes by the Southern Pacific for the year preceding the year of the Huntington purchase amounted to only 1.25 per cent of the total revenue of that system.

321 Certainly the desire to appropriate the trifling business done by the Southern Pacific Company on these minor lines or to suppress a competition in traffic which was in the aggregate of such

small proportions could not have been the inspiration of the vast outlay involved in the purchase of the Huntington stock. Neither was the suppression of competition in this infinitesimally small proportion of the business of both companies a substantial or natural consequence of that important transaction. It did not amount to a direct and substantial restraint of either interstate or international commerce.

It was at best only contingently, incidentally, and infinitesimally affected by it. This is not sufficient to bring it within the condemnation of the antitrust law. (United States v. Joint Traffic Association, 171 U. S., 505; Anderson v. United States, 171 U. S., 604; Field v. Barber Asphalt Co., 194 U. S., 618; Northern Securities Co. v. United States (supra); Cincinnati Packet Co. v. Ray, 200 U. S., 179; Phillips v. Iola Portland Cement Co., 61 C. C. A., 19, 125 Fed., 593; Arkansas Brokerage Co. v. Dunn & Powell, 97 C. C. A., 454, 173 Fed., 899; United States v. Standard Oil Company, 173 Fed., 177, and cases cited.)

This concludes consideration of the effect of the transaction chiefly relied upon by the Government in this case. But it is contended that the purchase by the Union Pacific of a controlling interest in the stock of the Northern Pacific Company was also violative of the antitrust law.

Without dwelling on the reason for the purchase of this stock, disclosed in the preceding statements of facts, it is sufficient to say that if any controlling interest was thereby acquired it was lost some time before this suit was instituted, and that none of that stock
322 is now held by or for the Union Pacific Company.

As there is no showing of any like ambitious project in this respect for the future, we fail to discover any opportunity or reason for the injunctive relief on this account.

The transaction of 1904, by which a syndicate of men interested in the Union Pacific Company purchased for their individual account $30,000,000.00 in face value of the stock of the Santa Fe Company, and the investment in 1906 of $10,000,000.00 by the Union Pacific in acquiring five per cent of that stock, are not claimed to have conferred any actual power of control upon the Union Pacific over operations of the Santa Fe Company. The proof does not disclose that any such control was acquired or attempted to be exercised. Even if the motive of the purchasers was to gain some inside information concerning the operations of the great competitor of the Union Pacific Company, they chose an entirely lawful way for doing it, and their acts afford no reason for judicial condemnation.

Much of the argument relating to the construction of the San Pedro route is addressed to the proposition that, because the San

Pedro line was not completed at the time the Huntington stock was purchased, and because there was no competition then existing between the roads in question, there could have been no contract, combination, or conspiracy in restraint of it. The contention of the Government in this particular that a contract to strangle a threatened competition by preventing the construction of an immediately projected line of railway which, if constructed, would naturally and substantially compete with an existing line for interstate traffic would be in violation of the antitrust law, may well be conceded.

323 (United States *v.* Patterson, 59 Fed., 280; Interstate Com. Com. *v.* Philadelphia & R. Ry. Co., 123 Fed., 696; Thomsen *v.* Union Castle Mail S. S. Co., 92 C. C. A., 315, 166 Fed., 251; Pennsylvania R. Co. *v.* Commonwealth, 3 Pa. (Pa. Sup. Ct. Cases), 83, 91.)

But this concession does not settle the question before us. The San Pedro line as originally projected and as ultimately constructed does not appear to have been naturally competitive with the Union Pacific, Southern Pacific, or any of the subsidiary lines. It is practically a continuation of the Union Pacific or Oregon Short Line southwardly, and, generally speaking, its course is at right angles rather than parallel with either the Union Pacific or Southern Pacific line. If it, as an existing route, had been acquired by the Union Pacific it would have served rather as a short cut from Los Angeles to Salt Lake City to avoid the circuitous route between those points via San Francisco than as a natural competitor for any of the business of that route. While it was calculated to deprive the Southern Pacific of a long haul on traffic destined between Los Angeles and Salt Lake City and beyond, it would be unfortunate indeed if that fact should have prevented its construction, especially when it was practically at right angles with the Southern line and much shorter and much better adapted to serve the public. In these circumstances it, as projected and built, was not, in our opinion, naturally competitive with the Southern Pacific line, as alleged in the bill.

It is, however, contended that in the adjustment of differences between the Union Pacific and its allied or subsidiary companies with the Clark interests, resulting in the construction of one line between Salt Lake City and Los Angeles instead of two as projected,

*324 there was a suppression of competition which would have existed between the two if they had been built separately. We, however, are unable to discover anything in the transaction except a laudable purpose to adjust differences and construct a line of railroad between the two points which would serve their joint interests as well as those of the public. The evidence discloses that it was not feasible to construct two lines of road over the only practicable route through the canyon in the mountains, known as Meadow Valley

Wash. This, with other reasons of a practical nature, fully justified the abandonment of the project of constructing two lines and the consolidation of them into one.

Some minor agreements fixing the relations between the new San Pedro line and the other lines composing the system of the Union Pacific as well as the provisions for fixing through and local rates were made, but these are so incidental to the main transaction already found not to have violated the interstate-commerce act as to warrant no further consideration.

If it be true, as already pointed out, that the San Pedro line was not naturally competitive with the Union Pacific or Southern Pacific lines none of these incidental things would disturb legitimate competition within the purview of the antitrust law.

The evidence discloses certain transactions between the Southern Pacific Company on the one hand and the Phoenix & Eastern and the California and Northwestern Railroad Companies on the other hand, which are claimed to have been in restraint of competition between them, but as they affect local transportation only and are not complained of in the bill as substantive wrongs and as neither of the two last-mentioned companies are made parties to this action, it is
325 not perceived how any independent relief with respect to them can be granted. We therefore refrain from considering them except in so far as they afford relevant evidence on issues joined in the case.

Having now found that the several contracts or transactions specifically complained of in this case did not offend against the antitrust law it seems hardly necessary to discuss the claim, little debated by counsel, that they evidenced a combination or conspiracy to do so. In determining whether a combination or conspiracy in violation of the first section of the antitrust act, namely, to restrict competition and thereby restrain commerce, was entered into, the facts already found may properly be supplemented by reference to actual consequences and results. These often reflect the original meaning and purpose of preceding transactions.

The proof shows that after 1901 as well as before the rates for transcontinental traffic were the same over both the Union Pacific and Southern Pacific lines; that there has since then been with respect to either of these lines no impairment of service, no deterioration of the physical properties, no discontinuance of efforts to satisfy the public, and no complaints of shippers of any inferior or inadequate service.

The large number of initial carriers striving for that traffic have continued their active solicitation for business over the line which assured them the longest haul or otherwise benefited them most, and

although some agents of the two roads which before 1901 were separate are now joint, they have continued to exercise their influence to secure business for either road according to its availability
326 and always in opposition to other active competitors like the Santa Fe and Denver & Rio Grande roads. A substantial majority of the stock of the Southern Pacific Company has been held by parties other than the Union Pacific Company, but we fail to find any complaint by such holders of any discrimination against their road or of any failure to properly promote its welfare. None of the minor points charged to have been deprived of competitive opportunities by the Huntington purchase are shown to have suffered as a result of that purchase.

On the contrary, hundreds of millions of dollars have since 1901 been expended on these roads. Their physical condition has been vastly improved, and their efficiency for public service, as well as for private profit, has been greatly enhanced. The whole proof taken together, we think, fails to disclose any conspiracy to restrain interstate or foreign commerce in violation of the first section of the act.

The same considerations lead to the conclusion that no combination or conspiracy to monopolize or attempt to monopolize trade or commerce among the States or with foreign nations was entered into. Moreover, the fact that the Union Pacific Company did not secure or undertake to secure the control of the Santa Fe road, a thoroughly sufficient, well-equipped, and powerful rival for transcontinental business, or the Denver & Rio Grande road, a potential and later an actual powerful rival for the same business, affords additional and conclusive evidence of no such combination or conspiracy.

The purchase by the Union Pacific Company soon after acquiring the Huntington stock of a majority of the capital stock of the
327 Northern Pacific Company tends to the opposite conclusion, but in view of the main reason for its acquisition and of the other facts just referred to, as well as the total cessation of any relations between that road and the Union Pacific Company, we are indisposed to give to that purchase alone any considerable significance.

The conclusions of fact already stated dispose of this case without the necessity of determining the question much debated in brief and argument whether securing control of the Southern Pacific Company by purchasing stock of individual owners could in any view of the case have contravened the antitrust law. On the facts of this case, with all their reasonable and fair inferences, we conclude that the Government has failed to substantiate the averments of its bill.

Mr. Justice Van Devanter, while a circuit judge, participated in the hearing, deliberation, and conclusion in this case, and he now concurs in this opinion.

The bill must bedismissed, and a decree will be entered to that effect.

Filed June 24th, 1911.

JERROLD R. LETCHER, *Clerk*,
By MARGARET B. CONNELL, *Deputy*.

328 THE UNITED STATES OF AMERICA
vs.
THE UNION PACIFIC RAILROAD COMPANY ET AL.

HOOK, Circuit Judge, dissenting.

Briefly stated, the decision of the court, in which I am unable to concur, is that the Union Pacific and Southern Pacific Railroads, universally regarded as parallel, in a broad geographical and legal sense, for about two thousand miles, were not competitors in 1901 for transcontinental or other traffic and therefore their merger in that year was not contrary to the Sherman antitrust Act. I agree with the court upon the minor features of the case, including, in a general way, that of the control of the San Pedro line by the Union Pacific Company. The latter is much as if a railroad company with a line from the West, through Omaha or Kansas City, to Chicago should obtain control of a branch from Omaha or Kansas City to St. Louis. In the absence of a more direct competitive relation than appears here the Sherman Act should not be held to cover such tangental acquisitions.

But the chief complaint of the Government is of an unlawful contract or combination in restraint of trade and commerce by which the Union Pacific and Southern Pacific transportation systems are held under a single control and competition between them is suppressed or destroyed. The combination was effected through the purchase by the Union Pacific of part of the capital stock of the Southern Pacific. Upon this two important questions arise. The first, which is one of law, is whether the purchase by one railroad company of corporate stock of another, less than the majority but sufficient in amount, according to the practical experience of men, to enable the purchaser to dominate or control the policies and operations of the other, is a form of combination within the prohibitions of the Sherman Act. The conclusion of the court being against
329 the Government on another ground, it was unnecessary to determine this question, but as I do not assent to the conclusion and as the question lies at the threshold of the Government's case, I should briefly express my view concerning it. There is no substantial difference between the holding of the corporate stocks of two companies by a third, such as was condemned in the Northern Securities case (193 U. S., 197), and the holding by one of those two of the

stock of the other. The form is somewhat different, but the effect, which is the chief concern of the law, is the same. If prior competition disappears, as a direct and natural result trade and commerce are restrained. If it is unlawful in the one case, it must be so in the other. It would be idle to hold that while two competing railroad companies can not lawfully submit to a common control through a separate stockholding organization they may do so by dispensing with that medium. That would be regarding shadows and letting the substance go. The language of the Sherman Act in this particular is broad. It covers every contract and combination in restraint of interstate and foreign trade or commerce, whether in the form of trust or otherwise. The essential, effective character of the arrangement is to be regarded rather than its casual vestiture, the substance rather than the form. In Harriman vs. Northern Securities Co. (197 U. S., 244, 297) it was assumed that the act could be violated by the direct holding of stock of a competing corporation. I grant it is a serious thing to disturb a great business transaction like that shown in the case at bar, but, given the power of Congress to legislate and clear words to express what a judge conceives to have been its purpose, his duty is plain, whatever he may think of the wisdom of the law. Even if public regulation is believed to be a wiser solution of the important economic problem than enforced competition,
330 with its necessary wastes and burdens, nevertheless his judgment of a law embodying the latter policy should proceed as with distinct approval of its selection. It is quite clear that, with the growth and development of governmental regulation of common carriers engaged in interstate commerce, there is decreasing reason for holding them subject to the Sherman Act, and it may be that, as regards rates of transportation, the Interstate Commerce Commission could perform its duties with equal justice to the public and greater justice to the railroads if they were released. But certainly that is for Congress, not the courts. The judicial function is properly exercised when the Sherman Act is construed and applied as though it were the only legislative remedy on the statute books.

The other question in the case is decided by the court against the Government. It is whether the two great transportation systems, the Union Pacific and the Southern Pacific, were, in a substantial sense, competitors in interstate and foreign commerce. This question involv's the relative location of their lines on land and sea and not only the parts they actually performed, but also those they were naturally capable of performing in the movement of traffic. Albeit in part within the domain of judicial knowledge, this seems to me to be a pure question of fact. Some hundreds of witnesses, practical railroad men and shippers of wide experience, testified upon it and a great mass of evidence was taken, showing, almost without dispute,

that, using the term "competition" as business men understand and use it, there was active, vigorous, and substantial competition between the Union Pacific and the Southern Pacific before the former obtained control of the latter. But the court holds the question of competition to be one of mixed law and fact, not determinable by the evidence alone, and as such it is answered against the Government.

331 Roughly stated the situation was this: In 1901 when the stock purchase was made the Union Pacific had lines of railroad from the Missouri River at Council Bluffs, Iowa, and Kansas City, Missouri, to Cheyenne, Wyoming, thence a line through Ogden, Utah, to Portland, Oregon, lines of steamers from Portland to San Francisco, California, and from San Francisco and Portland to oriental ports; also certain rights under an act of Congress (13 Stat., 356) with respect to the Central Pacific Railroad, which was controlled by the Southern Pacific, from Ogden to San Francisco. At the Missouri River the Union Pacific had many connections with the principal cities of the country and the Atlantic seaboard by the roads of other companies directly interested in routing west-bound traffic by its line as against the Sunset Route, so-called, of the Southern Pacific. On the other hand the Southern Pacific has a steamship line from New York to New Orleans, Louisiana, thence a railroad to southern California and up through San Francisco to Portland, the above-mentioned railroad from Ogden to San Francisco, a steamship line from San Francisco to the Orient, and a steamship line from San Francisco to Panama, being the Pacific link of the Panama rail and water route from New York to San Francisco. The Southern Pacific also had at New Orleans connection similar to those of the Union Pacific by the roads of other companies directly interested in routing west-bound traffic by its line as against that of the Union Pacific. The most important competition, so termed by railroad men and shippers, between the two companies was for transcontinental business. There was also active competition at intermediate points where considerable traffic originated. The two companies were distinct in control, management, and operation, with separate officers, directors, traffic and operating officials, commercial agencies, and soliciting agents. Since the combination, common officers and directors of traffic and operation were elected or appointed, competitive commercial agencies were consolidated or abolished, the

332 activities of the two systems have been in close harmony, not in rivalry, and competition has disappeared.

Reduced to the simplest terms the conclusion of the court that the two companies were not competitors, and the Sherman act was not violated is based on these two grounds.

(1) Trade and commerce were not restrained because before the combination the competitive interstate and foreign traffic of the two railroad companies was not a substantial percentage of their total traffic, including in such total the traffic entirely within the several States over which Congress had no control.

(2) Trade and commerce were not restrained, because before the combination one of the lines of railroad, the Union Pacific, was an intermediate one in a through route and depended for competitive traffic upon the business interests of connecting carriers, and therefore could not by itself alone, unaided by the concurrence of its natural allies, make a joint through rate over the entire route. In other words, each party to a contract or combination between railroad companies, which the Government assails as being contrary to the Sherman Act, must have owned or controlled an entire through route over which competitive traffic moved. That it may have performed an essential part or have been a necessary factor in the transportation is insufficient. That connecting carriers may have voluntarily joined it in making through rates for the traffic is immaterial.

With the greatest deference to my brothers, I am so profoundly impressed with the conviction that these conditions are without substantial relevance to the question before us that I am constrained to dissent from the opinion of the court. Moreover their introduction so greatly narrows the act of Congress, which, however it may be regarded, is the law of the land, that very little is left of it
333 when applied to railroads. Under one or both of those tests the Union Pacific could probably have lawfully purchased control of all the great parallel railroad systems in the United States. It could doubtless have been shown in most instances that the interstate and foreign traffic, of each for which it competed with the Union Pacific or with any of the others, was but a small percentage of its total traffic of all kinds, and we know that all of them depended upon connecting lines at least for transcontinental and much other traffic and could not unaided have made joint through rates with respect to it. Nor is it clear that what could have been done in 1901 might not as well be done to-day. It is suggested that by the passage of the Hepburn Act (June 29, 1906) Congress empowered the Interstate Commerce Commission to prescribe through routes and joint rates where connecting carriers have refused, and therefore a different rule respecting competition has since prevailed. I am wholly unable to perceive the material pertinence of that act, much less its controlling effect. The matter of compulsory joint rates is purely adventitious except as business may be facilitated over a combined route. A joint through rate merely implies a single charge

less than the aggregate of the locals for a continuity of transportation over two or more connecting lines. Carriers always have the power to make such rates and commonly did so with allies of their own selection, but whether the traffic movement was under joint rates or combinations of local rates does not seem to me to determine the existence or nonexistence of competition. If rival lines or routes contended for the traffic and it moved, by single line or by combination of connecting lines, there was competition. If not, it must be that until 1906, when the Hepburn Act was passed, the Southern Pacific, with its through water and rail route from New York to San Francisco, never had a competitor for transcontinental traffic in any of the great railroad systems in the United States or in all combined.

334 The traffic for which the Union Pacific and Southern Pacific competed in 1901 and which one or the other secured was of enormous volume when considered by itself. It ran into millions of dollars, and with the natural development of the country and the growth of commerce, reasonably to have been foreseen, it has since then greatly increased. The competition was direct, not incidental, and the business for which they strove was appreciable or substantial, not insignificant. But tables of figures are given by defendants, from which it appears that the interstate and foreign traffic between competitive points secured by each was but a small percentage of the tonnage of its entire system, and it is therefore argued that the competition to which the act of Congress applies was relatively so small there could have been no restraint or suppression in a substantial sense, and hence no intent to restrain or suppress it. The comparisons being with the total tonnage of the railroads, obviously an element is included which is wholly beyond the power of Congress, namely, the traffic local to the States. The logical conclusion from this view must be that the Sherman Act is not violated whenever the trade or commerce within its operation, affected by the contract or combination, however great in volume, is overshadowed by that exclusively within the jurisdiction of the States. In other words, though substantial competition in interstate or foreign commerce has been actually suppressed it must be held there was no intention to suppress it. The magnitude of the traffic shown by the proofs was too great and the competition for it too earnest and active to dismiss it as merely incidental to the principal business of the companies and as not furnishing a motive for the merger or combination. A contention somewhat similar was made by defendants in the Northern Securities case. It was there argued (193 U. S., 261–2) that

335 the entire interstate commerce of the two railroads, the Great Northern and the Northern Pacific, the rates on which could be controlled by them without other competition or consent of connecting lines, was less than three per cent of their total interstate com-

merce, and that the restraint could not in any event affect more than that per cent of their commerce of that character. The argument, however, was without avail.

In a broad and substantial sense, in the sense in which the terms are used in constitutions and statutes and in railroad and business circles, the Union Pacific and Southern Pacific lines were parallel and competing. That they were so regarded by practical men having to do with transportation in its various phases is shown, I think, by an overwhelming mass of evidence. But had no witness testified regarding it we should come to the same conclusion. There are occasions when courts in the exercise of their judicial functions are entitled to look out into the world of affairs to observe whether there is not a common knowledge of the subject before them so universal and pervading as not to admit of testimonial controversy. That is termed judicial notice, and it proceeds upon the assumption that a judge should not be blind to what all others see and understand. It embraces the great currents of trade and commerce in his country—the general movements of products and manufactures—as completely as it does the important features of its physical geography, the location of the cities, the ports, the navigable waters, and the lines of railroad.

The question whether a combination of two transportation lines is contrary to the Sherman Act is not always to be reduced to a close consideration of the number of tons of competitive freight they carried within a given period, much less the precise relation of the competitive tonnage to their total business of all kinds. Were
336 they, at the time of the combination, in a substantial degree competitive factors in interstate and foreign commerce? Were they so laid upon land and sea as inherently to possess a substantial competitive capacity for the movement of such traffic? It is not merely the extent to which that capacity was utilized yesterday, but the extent to which the transportation facilities were naturally capable of being utilized; and reasonable, not speculative, regard should be had for the developments of to-morrow. Were it otherwise Congress, in the making of laws, would be denied that ordinary foresight which men engaged in business commonly possess and practice. Competition as the antithesis of monopoly is the influence which those in the same line of business have on each other, and that influence may as well be manifested in an existing capacity and preparedness as in the degree of active exercise. A moment's reflection will show this is old doctrine in the judicial construction and application of laws against monopolies and restraint of trade. A railroad company may have great if not controlling influence on competition regardless of the amount of the traffic it actually carries at

the time. With a line of railroad scarcely less permanent than a navigable waterway it stands equipped and ready to do the business when conditions arise, and the duty to do it comes from the very character of its corporate being and the source of its powers and franchises. It may at once be both a curb and a spur to other lines—a curb as regards rates and a spur as regards quality of service, which are the two great points at which transportation touches the public interest. The influence of the Mississippi River and its navigable tributaries upon the trade and commerce of St. Louis is well known, yet of the enormous freight tonnage into and out of that city, largely interstate, scarcely one-half of one per cent moves by water. To be more exact, of the total rail and river traffic in 1910 nearly fifty-
two million tons, but thirty-six hundredths of one per cent
337 was transported by water; in 1909 but sixty-seven hundredths
of one per cent of that year's tonnage. But who would contend that if the rivers were the subject of private ownership, instead of being common highways for the use of all, their control by a railroad company could not restrain trade or commerce because as measured by relative percentages the competition appeared to be so slight?

When the argument was made at the hearing that because the Union Pacific was an intermediate, not a through line, it was not a competitor for traffic moving over it and its connections for which it could not have made a joint through rate, counsel admitted that the rule contended for would have made it lawful under the Sherman Act for all intermediate lines in transcontinental transportation such as the Chicago, Rock Island & Pacific from Chicago to El Paso, the Atchison, Topeka & Santa Fe from Chicago to Mojave (before it gained entrance to San Francisco), the Missouri, Kansas & Texas from St. Louis and Kansas City to Texas points, the St. Louis & San Francisco from St. Louis and Kansas City to the southwest, the Missouri Pacific with the Denver & Rio Grande from St. Louis to Ogden, and the Union Pacific to have combined and agreed among themselves as was done in the Trans-Missouri Freight Association case (166 U. S., 290) if they confined their combination to transcontinental traffic. In other words, that those two intermediate railroads could not be competitors for the traffic, and a confederation with respect thereto could not be unlawful. It seems to me that a statement of the contention shows its unsoundness. Anything that affects the rate over a substantial part of a transportation route is calculated to affect the charge as an entirety; and so of the other features of railroad competition. The competition of the all-water route by the Atlantic and Pacific Oceans with the all-rail transcon-
tinental routes in the United States is so fully recognized that
338 it is safe to say almost every carload rate to the Pacific coast

from the territory between the Missouri River and the Atlantic seaboard exhibits a recognition of its influence. And yet it is contended that the Union Pacific in the direct line of traffic movement with a thousand miles of railroad from the Missouri River to Ogden, and nearly nine hundred miles thence to Portland, with its steamship lines, is not a competitor for transcontinental traffic.

The practical aspect of the question is shown by the cases in which railroad companies have asserted the existence of competition from rival lines or routes of transportation as evidencing conditions justifying discriminations and preferences under the interstate commerce act—that the rates objected to as discriminative were controlled by competition and if they abandoned the rates they would lose the business. An instance of this appears in Texas & Pacific Railway *v.* Interstate Commerce Commission (162 U. S. 197). The Texas & Pacific Railroad from New Orleans to El Paso, Texas, and the Southern Pacific Railroad thence to San Francisco formed a through route over which traffic both foreign and domestic moved. The Texas & Pacific Company successfully defended its right to charge and receive more for its proportion of the through rate on traffic originating in New Orleans than it charged and received on import traffic originating in London and Liverpool and billed through New Orleans over the same route to San Francisco, and it did so on the ground asserted that the rate from the English cities to San Francisco was determined by competition with the following routes: By vessel around the Horn, by vessel and by rail across the Isthmus of Panama, and (p. 216) by vessel and by rail across Canada. Were all those transportation agencies subject to the laws of the United States could it with reason be urged that a contract or combination between
339 them suppressing a competition which actually existed would not contravene the Sherman Act because all but one of them were composed of connecting links severally owned or controlled? If that which men engaged in transportation recognize as substantial competition in shaping their policies and their conduct is not so regarded in the courts the statute will not have the operation intended by its enactment. Laws are generally framed to apply to the everyday affairs of men who are not given to the study of nice differences and distinctions and that should always be borne in mind in determining their meaning.

But it is said there was no competition because the Union Pacific depended upon the Southern Pacific Line from Ogden to San Francisco. It is true that much of the transcontinental traffic of the Union Pacific went that way, but it is not unusual for railroad systems to connect at points and interchange business, though they are active competitors in other respects. In fact a large proportion of them are so related. Competition, within the laws which seek

to preserve it, does not imply absolute nonintercourse as between hostile armies which exchange no prisoners and give no quarter. Moreover, the use of the Ogden line was neither a necessity to the Union Pacific nor a pure favor or concession by the Southern Pacific. Aside from the mutual benefits from the interchange of traffic the former had its own line from Ogden by way of Portland, which, though not as desirable, was more than an important, strategic advantage necessary to be reckoned with. But were all this otherwise the undeniable fact remains, after stripping the case of all debatable considerations, that the Union Pacific secured this westbound traffic by active competition and had transported it as competitive for a thousand miles before it reached Ogden. I think that upon the main feature of the case the Government is entitled to a decree.

340 In the United States Circuit Court for the District of Utah.
April term, A. D. 1911.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.	No. 993. In Equity.

This cause came on to be further heard at this term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the bill be and the same is hereby dismissed.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Judges.

June 24, 1911.

Filed June 24, 1911.
JERROLD R. LETCHER, *Clerk*,
By MARGARET B. CONNELL, *Deputy*.

341 (Copy.)

In the United States Circuit Court for the District of Utah. April term, A. D. 1911.

THE UNITED STATES OF AMERICA, complainant, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, William A. Clarke, and Robert S. Lovett, as trustee, defendants.	No. 993. In equity.

To the judges of the Circuit Court of the United States for the District of Utah:

Now comes the United States of America, the complainant above named, and conceiving itself aggrieved by the decree made and entered against it in the above-entitled cause on the 24th day of June, 1911, does hereby appeal to the Supreme Court of the United States from said decree and each and every part thereof; and prays that this its appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was
342 made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 31st day of August, 1911.

CORDINO A. SEVERANCE,
Special Assistant to the Attorney General.

Allowed, this——day of————, 1911.

Filed Sept. 9, 1911.

JERROLD R. LETCHER,
Clerk.

343 In the United States Circuit Court for the District of Utah.
April term, A. D. 1911.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE UNION PACIFIC RAILROAD COMPANY, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedero, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, William A. Clark, and Robert S. Lovett, as trustee, defendants.

No. 993. In equity.

Asignment of errors.

Now comes the United States of America, the complainant above named, and presents this assignment of errors and says that in the record and proceedings in the above-entitled case and the final decree made and entered against it therein, there is error in the particulars hereinafter set forth: that is to say:

1. The court erred in decreeing that said cause be dismissed on the merits.

344 2. The court erred in holding that the lines of railway of the Union Pacific Railroad Company were not competitive with the lines of railway and steamship lines of the Southern Pacific Company.

3. The court erred in holding that the lines of railway and steamships of the Union Pacific Railroad Company, or either of them, were not competitive with the lines of railway or steamships, or either of them, of the Southern Pacific Company.

4. The court erred in holding that the purchase by the Union Pacific Railroad Company, or its subsidiary company, the Oregon Short Line Railroad Company, of sufficient stock of the Southern Pacific Company to dominate the same and elect its board of direc-

tors and control its management, was not in violation of section 1 of the act of July 2, 1890, and that said purchase did not result in restraint of trade or destruction or lessening of competition in violation of said section.

5. The court erred in holding that the purchase of the said stock of the Southern Pacific Company by the Union Pacific Railroad Company, or its subsidiary company, the Oregon Short Line Railroad Company, did not monopolize, or tend to monopolize, commerce among the States in violation of section 2 of the act of July 2, 1890.

6. The court erred in holding that the acquisition by the Oregon Short Line Railroad Company of one-half of the stock of the San Pedro, Los Angeles & Salt Lake Railroad Company was not in violation of either sections 1 or 2 of said act of July 2, 1890.

7. The court erred in holding that the purchase by the Union Pacific Railroad Company, or its subsidiary company, the Oregon Short Line Railroad Company, of a majority of the stock of the Northern Pacific Railway Company, was not in violation of either sections 1 or 2 of the act of July 2, 1890.

345 8. The court erred in holding that the purchase of stock in the Atchison, Topeka & Santa Fe Railway Company by the individual defendants and by the Union Pacific Railroad Company, as alleged in the complaint and shown by the testimony, was not in violation of sections 1 or 2 of the act of July 2, 1890.

9. The court erred in holding that the sale of the stock of the Phoenix & Eastern Railroad Company by the Atchison, Topeka & Santa Fe Railway Company to the Southern Pacific Company was not in violation of either sections 1 or 2 of the act of July 2, 1890.

10. The court erred in holding that the amalgamation of the lines of railway of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company in northwestern California into the Northwestern Pacific Railroad Company and the division of the stock of the said company equally between the said two corporations was not in violation of section 1 or 2 of the act of July 2, 1890.

11. The court erred in holding that the Portland and Asiatic Steamship Company, the capital stock of which is owned by the Oregon Railroad & Navigation Company, was neither organized nor equipped for general traffic, but only for transporting grain and flour originating on the line of the Oregon Railroad & Navigation Company in competition with the Northern Pacific and Great Northern railroads; on the contrary, the court should have held that the same was organized and equipped for and engaged in general traffic in competition with the steamship lines controlled by the defendant Southern Pacific Company.

12. The court erred in holding that the steamship line of the Oregon Railroad & Navigation Company from Portland to San

346 Francisco was an inadequate provision for any regular traffic and particularly transcontinental traffic, and that its sailings were irregular and unreliable; on the contrary, the court should have found upon the evidence that the said steamship line had regular and reliable sailings and was adequately provided to, and did in fact, engage in regular traffic in competition with the rail lines of the Southern Pacific Company.

13. The court erred in holding that the Chicago, Burlington & Quincy Railroad Company was a natural and important feeder for the defendant Union Pacific Railroad Company; it should have found that the same was an active competitor of said Union Pacific Railroad Company, and only incidentally interchanged business with it.

14. The court erred in finding that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company was organized in 1902; it should have found that the same was publicly projected in the year 1900, and was actually organized in the spring of the year 1901.

15. The court erred in holding that the Union Pacific Railroad Company had no other direct connection for the Pacific coast trade except the Southern Pacific road itself; it should have held, on the contrary, that the Union Pacific Railroad, together with its subsidiary lines, owned and operated with it, reach the Pacific coast trade directly.

16. The court erred in finding that the defendant Harriman, acting for the Union Pacific Railroad Company, to meet in menace occasioned by the fact that the Southern Pacific road connected at Ogden, Utah, with the Denver & Rio Grande Railroad Company, and to secure reliable and permanent arrangement for Pacific coast business, first tried to purchase from the Southern Pacific
347 Company the old Central Pacific line extending between Ogden and San Francisco; it should have held that there was no evidence of any such attempt.

17. The court erred in finding that the defendant Harriman, having failed to purchase from the Southern Pacific Company the Central Pacific line between Ogden and San Francisco, entered into negotiations with C. P. Huntington in his lifetime for the purchase of a large block of the capital stock of the Southern Pacific Company owned by him.

18. The court erred in finding that the said Harriman, being unsuccessful in such negotiations, renewed his efforts to secure that stock from Mr. Huntington's heirs and devisees after his death, in 1900, and that in that effort he had a competitor in George Gould, acting for the Gould interests.

19. The court erred in finding that after an unsuccessful effort to secure from Mr. Hill, who acted for the Northern Pacific Railway

Company, a partial interest in the purchase of the Chicago, Burlington & Quincy Railroad, the defendant Harriman purchased for the Union Pacific a majority of the capital stock of the Northern Pacific Railway Company, in order to secure a continuance of the fair and equitable relations which had theretofore existed between the Union Pacific and the Burlington roads; it should have held that the said purchase was made for the purpose of controlling the competition between said Union Pacific and Burlington roads and between the Union Pacific and Northern Pacific roads.

20. The court erred in finding that some time after the acquisition by the Union Pacific Company of the Southern Pacific stock, the latter company became involved in a controversy with the Phoenix & Eastern Railroad, the owners of a short line of road in Arizona, and the litigation ensued which resulted in the sale of the Phoenix & Eastern Railroad to the Southern Pacific Company; the court
348 should have held that the controversy mentioned was between the Southern Pacific Company and the defendant Atchison, Topeka & Santa Fe Railroad Company, which latter company was the owner of all the capital stock and in control of the Phoenix & Eastern Railroad Company; and should have held that the sale of the Phoenix & Eastern Railroad to the Southern Pacific Company resulted in no way from any litigation, but was made for the sole purpose of preventing competition between the Atchison, Topeka & Santa Fe Railroad Company and the Southern Pacific Company.

21. The court erred in finding that prior to 1890 the Union Pacific Company, through its subsidiary company, the Oregon Short Line, constructed a line of railroad extending from Salt Lake City in a southwesterly line to Milford; on the contrary, it should have found that neither the Union Pacific Company nor the Oregon Short Line Company was organized until many years after the said road was constructed to the point named; that a portion of the grading beyond Milford had been sold to another company, which had constructed a line of railroad upon the same, and that the balance of the said grading had been abandoned.

22. The court erred in finding that the initial carrier, commonly, was able to and did determine the routing of transcontinental traffic; on the contrary, the court should have held that the routing of the same was secured by the soliciting agents of the Union Pacific and Southern Pacific Companies prior to 1901 in competition with each other.

23. The court erred in holding that the actuating intent and purpose of the Union Pacific Company in acquiring the Huntington stock was to secure a permanent, reliable connection at Ogden for through traffic over the Central Pacific line to the Pacific coast, and

thereby to save the necessity for constructing a road of its own from Ogden to San Francisco.

349 24. The court erred in holding that it was not claimed by the complainant that the Union Pacific was a competitor of the Southern Pacific for any business originating west of New York or Pittsburg common points, a thousand or more miles away from its line; on the contrary, it should have found that it was claimed by complainant and established by the proof in the case that the Union Pacific was an active competitor of the Southern Pacific for transcontinental traffic originating at or destined to points on the Missouri River and all points east thereof in the United States.

25. The court erred in finding that the traffic between New York and interior points, on the one hand, and Portland, Oregon, on the other, was of trifling importance; on the contrary, it should have found that the same was substantial in amount.

26. The court erred in finding that the defendant Union Pacific Railroad Company was not an independent competitor with the Southern Pacific Company for transcontinental business between points in the east and San Francisco; on the contrary, it should have held that the said companies were active competitors for said traffic.

27. The court erred in holding that the Union Pacific Railroad Company was in no position to coerce any action by the Southern Pacific as to interchange of business at Ogden.

28. The court erred in holding that the Southern Pacific had the power to deflect all eastbound traffic to another line at Ogden.

29. The court erred in holding that the Union Pacific Railroad Company was absolutely dependent upon the Southern Pacific Company and also dependent upon the voluntary action of its eastern connections, and that therefore no profitable competition between it and the Southern Pacific was possible.

350 30. The court erred in holding that instead of the situation being competitive between the two roads, they really acted together and co-operated between themselves and with their connections in securing as much of the transcontinental traffic each for the other, according to their respective facilities, as they could get.

31. The court erred in holding that under the act of July, 1862 (12 Stats. A. L., 495), and the act of July 2, 1864 (13 Stats. A. L., 362), the Union Pacific Company had no power to compel the Southern Pacific to interchange traffic with it on terms as to rates and divisions as favorable as given to any other connections.

32. The court erred in holding that the question as to whether there was competition between the Union Pacific Railroad Company and the Southern Pacific Company prior to 1901 was a mixed question of law and fact, not susceptible of determination by the prepon-

derance of proof as an issue of fact only; on the contrary, it should have been held that the same was a question of fact and that the overwhelming proof was in favor of the complainant.

33. The court erred in finding that all of the facts of the case considered in their natural, reasonable, and practical aspect and given their appropriate relative signification did not make the Union Pacific a substantial competitor for transcontinental business with the Southern Pacific in or prior to the year 1901.

34. The court erred in finding that the route of the Southern Pacific for business between the Atlantic Seaboard and middle States on the one hand and Portland and Willamette Valley common points on the other hand, was by its own line via New Orleans and San Francisco to Portland; it should have held that it not only had that line, but that it also had and moved large quantities of traffic over its line from Ogden to Portland, together with its connections east of Ogden, in competition with the Union Pacific Railroad Company and its subsidiary companies.

351 35. The court erred in holding that the geographical relation of the Union Pacific route from Omaha and Kansas City on the east to Portland and the Willamette Valley to the Southern Pacific route rendered natural and fair competition between them for the Portland trade impossible.

36. The court erred in finding that the volume of said traffic was slight; it should have held that the same was substantial in amount.

37. The court erred in holding that physically and practically speaking, in view of the circuity of the route of the Southern Pacific and of the necessary dependence of both the Southern Pacific and the Union Pacific upon volunteer connections real rivalry between said companies for traffic between the Atlantic seaboard and Colorado and Utah common points was not possible; on the contrary, the court should have held that the said traffic was the subject of active competition between said companies.

38. The court erred in holding that the said traffic between the Atlantic seaboard and Colorado and Utah common points was of little volume and comparatively unimportant; it should have held that the same was substantial in amount.

39. The court erred in finding that the traffic between San Francisco on the one hand and Portland and points in the Willamette Valley on the other hand, competed for by the subsidiary lines of the Union Pacific Railroad Company and the Southern Pacific Company was small; on the contrary, the court should have held that the same was large and important, and that competition for the same was entirely destroyed by the purchase of the Southern Pacific stock.

40. The court erred in holding that the business competed for by the Southern Pacific Company, and the subsidiary lines of the
352 Union Pacific Railroad Company between Portland and Willamette Valley common points on the one hand and Ogden and common points on the other was trifling; on the contrary, the court should have held that the same was substantial in amount.

41. The court erred in holding that the routes over which traffic was competed for between San Francisco on the one hand and points in Montana, Idaho, eastern Oregon, and Washington on the other were uncompetitive.

42. The court erred in holding that traffic between San Francisco on the one hand and points in Montana, Idaho, eastern Oregon, and Washington competed for was insignificant in amount; it should have held that the same was substantial in amount.

43. The court erred in holding that competition between the Union Pacific Railroad Company and the Southern Pacific Company on oriental traffic was not eliminated because the amount of the said business was small; on the contrary, the court should have held that the said oriental business that was formerly the subject of competition between said companies was substantial in amount.

44. The court erred in holding that the business as to which competition between the Union Pacific Railroad Company and the Southern Pacific Company was suppressed was an infinitesimally small proportion of the business of both companies.

45. The court erred in finding that the suppression of said competition was not a substantial or natural consequence of the purchase of the stock of the Southern Pacific Company by the Union Pacific Railroad Company, and that such suppression of competition did not amount to a direct and substantial restraint of either interstate or international commerce.

353 46. The court erred in finding that said purchase only contingently, incidentally, and infinitesimally affected such competition.

47. The court erred in finding that the proof does not disclose that any control of the Atchison, Topeka and Santa Fe Railway Company was secured by the individual defendants who were directers of the Union Pacific Railroad Company in 1904.

48. The court erred in finding that whatever the motives of the individual defendants in purchasing Atchison, Topeka and Santa Fe stock, their action was lawful and afforded no reason for judicial condemnation.

49. The court erred in holding that the line of the San Pedro, Los Angeles and Salt Lake Railroad Company as originally projected and as ultimately constructed was naturally competitive with the

Union Pacific, the Southern Pacific, or any of the subsidiary lines of said company.

50. The court erred in holding that it was not unlawful for the Union Pacific Railroad Company and its subsidiary companies to combine with the San Pedro, Los Angeles & Salt Lake Railroad Company in the construction of the line between Salt Lake and Los Angeles, suppressing the competition which would have existed if said two lines had been separately constructed.

51. The court erred in holding that the agreemnts between the San Pedro, Los Angeles & Solt Lake Railroad Company and the Oregon Short Line Railroad Company, suppressing competition between these lines, were not illegal.

52. The court erred in holding that the acquisition of the stock of the Phoenix & Eastern by the Southern Pacific Company and the amalgamation of the lines of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company in California affected only local transportation.

354 53. The court erred in holding that independent relief could not be granted as to those matters because of the fact that the Phoenix & Eastern Railroad Company and the California & Northwestern Railroad Companies were not parties to the action.

54. The court erred in finding that there had been no impairment of service as the result of the amalgamation of the Union Pacific and Southern Pacific systems.

55. The court erred in holding that none of the minor points charged to have been deprived of competitive opportunities by the Huntington purchase are shown to have suffered as the result of that purchase.

56. The court erred in holding that the whole proof taken together fails to disclose any conspiracy to restrain interstate or foreign commerce in violation of the 1st section of the act of July 2, 1890.

57. The court erred in holding that no combination or conspiracy was entered into to monopolize or attempt to monopolize trade or commerce among the States or with foreign nations.

58. The court erred in finding that the defendant Union Pacific Company did not secure or undertake to secure control of the Atchison, Topeka & Santa Fe Railway Company.

60. The court erred in holding that the defendant Union Pacific Railroad Company did not undertake to secure control of the Denver & Rio Grande Railroad Company.

6*L*. The court erred in including in the earnings of the Union Pacific Railroad Company and its subsidiary companies and the Southern Pacific Company all earnings on interstate business in determining as to whether the amount of traffic as to which competi-

tion between the Union Pacific Railroad Company and its subsidiary companies, and the Southern Pacific Company, was suppressed, formed a substantial percentage of the traffic of said companies.

62. The court erred in excluding from consideration, in determining the percentage of the earnings of the Union Pacific Railroad Company and the Southern Pacific Company as to which competition was suppressed, all earnings upon transcontinental traffic originating in or destined to California points.

Wherefore the complainant above named prays that for the errors aforesaid in the said decree it may be in all things reversed and that said Circuit Court be directed to enter a proper decree in favor of the complainant and against the said defendants and each of them.

Dated August 31st, 1911.

CORDINO A. SEVERANCE,
Special Assistant to the Attorney General.

Filed Sept. 9, 1911.

JERROLD R. LETCHER, *Clerk.*

(Copy.)

In the United States Circuit Court for the District of Utah. April term, A. D. 1911.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY; THE Oregon Shortline Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; William A. Clark; and Robert S. Lovett, as trustee, defendants.	No. 993. In equity.

The complainant United States of America, having prayed for the allocance of an appeal in the above entitled cause to the Supreme Court of the United States from the decree entered therein on the 24th day of June, 1911, and from each and every part thereof, and having presented and filed its assignments of errors.

It is ordered that the said appeal be, and the same is now hereby allowed as prayed, and the clerk of this court is hereby directed to transmit a duly authenticated transcript of the record, papers, and proceedings in said cause to the Supreme Court of the United States at the earliest practicable date, using for that purpose the printed copies of those parts of the record used on the hearing and such other printed parts of the same as may be furnished by counsel and found by him to be correct.

Dated this 5th day of September, A. D. 1911.

WALTER H. SANBORN,
U. S. Circuit Judge.

Filed Sept. 9, 1911.

JERROLD R. LETCHER, *Clerk.*

357 (Copy.)

In the United States Circuit Court for the District of Utah. April term, A. D. 1911.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, William A. Clark, and Robert S. Lovett, as trustee, defendants.	No. 993.	In equity.

It is stipulated by and between the parties to the above-entitled action as follows:

That the clerk of the Circuit Court, in certifying the record in this case to the Supreme Court of the United States may use and certify a printed copy of the testimony, exhibits, and proceedings before the special examiner herein as printed for and used in the Circuit Court without comparing the same with the original transcript on file in his office, and that said printed copy so certified shall for all purposes on said appeal be taken and used with the same force and effect as

358 though the same had been compared by the clerk and certified according to the rules; and, with the consent of the Supreme Court, the same need not be reprinted in that court, but the complainant may file the necessary number of copies of said printed record.

FRANK B. KELLOG,
CORDINO A. SEVERANCE,
Special Assistants to the Attorney General.
ROBERT S. LOVETT,
Counsel for Defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company.
A. S. HALSTED,
Counsel for Defendants, W. A. Clark, and San Pedro, Los Angeles & Salt Lake Railroad Company.
CRAVATH HENDERSON & DE GERSDORFF,
Solicitors for Defendants Schiff & Kahn.
WALKER D. HINES,
Counsel for Atchison, T. & S. F. Ry. Co.
TURNER RALSTON & HORAN,
Attys. for Deft., The Farmers' Loan & Trust Co.
JAMES M. BECK,
Counsel for Jas. Stillman, a Defendant.
D. T. WATSON,
Counsel for Henry C. Frick.

Filed Sept. 9, 1911.

JERROLD R. LETCHER, *Clerk.*

359 In the United States Circuit Court for the District of Utah.

UNITED STATES OF AMERICA
v.
UNION PACIFIC RAILROAD COMPANY ET AL. } No. 993. In Equity.

UNITED STATES OF AMERICA,
District of Utah, ss:

I, Jerrold R. Letcher, clerk of the United States Circuit Court for the District of Utah, hereby certify that the foregoing printed volumes numbered—

A. (Vol. XII, Pleadings, pages 1–284, inclusive);
B. (Vol. I, Evidence & Proceedings before Special Examiner, pages 1–506, inclusive, complainant);

C. (Vol. II, Evidence & Proceedings before Special Examiner, pages 507 to 934, inclusive, complainant);
D. (Vol. III, Evidence & Proceedings before Special Examiner, pages 935–1433, inclusive, complainant);
E. (Vol. IV, Evidence & Proceedings before Special Examiner, pages 1434–1896, inclusive, complainant);
F. (Vol. V, Evidence & Proceedings before Special Examiner, pages 1897–2354, inclusive, complainant);
G. (Vol. VI, Evidence & Proceedings before Special Examiner, pages 2355–2898, inclusive, complainant);
H. (Vol. VII, Evidence & Proceedings before Special Examiner, pages 2899–3467, inclusive, complainant);
I. (Vol. VIII, Evidence & Proceedings before Special Examiner, pages 3469–3884, inclusive, defendants);
J. (Vol. IX, Evidence & Proceedings before Special Examiner, pages 3885–4402, inclusive, defendants);
K. (Vol. X, Evidence & Proceedings before Special Examiner, pages 4403–4881, inclusive, defendants);
L. (Vol. XI, Evidence & Proceedings before Special Examiner, pages 4883–5124, complainant's rebuttal & general index);

And together with—

1. Certificate and report of special examiner;
2. Order as to publication of proofs;
3. Order setting cause for trial;
4. Statement of case and opinion of trial court;
5. Opinion of Hon. Wm. C. Hook, circuit judge, dissenting;
6. Decree—dismissing bill;
7. Petition for appeal by complainant;
8. Assignment of errors:
9. Order allowing appeal;
10. Stipulation as to use of printed copies of testimony and proceedings—

are as full and complete a transcript of the record and proceedings in the above and therein entitled cause as it purports to contain, and as the same remains of record and on file in the clerk's office and made pursuant to a stipulation on file therein.

360 I further certify that the original citation is hereto attached and returned with the transcript of the record in said cause.

In testimony whereof I have hereunto set my hand as clerk and affixed the seal of said court at Salt Lake City, in said district, this

27th day of September, A. D. 1911, and of the independence of the United States of America the 136th year.

[SEAL.] JERROLD R. LETCHER, *Clerk.*

361 *Original Citation.*

By the honorable one of the judges of the Circuit Court of the United States for the District of Utah, in the Eighth Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Union Pacific Railroad Company; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Jacob H. Schiff, Otto H. Kahn; James Stillman, Henry C. Frick, William A. Clark, and Robert S. Lovett as trustee—greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days of the date hereof, pursuant to an appeal duly allowed by the Circuit Court of the United States for the District of Utah, and filed in the office of the clerk of said court on the 9th day of September, A. D. 1911, in a cause wherein United States of America is appellant, and the Union Pacific Railroad Company; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Jacob H. Schiff, Otto H. Kahn, James Stillman,
362 Henry C. Frick, William A. Clark, and Robert S. Lovett as trustee, are respondents, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at Salt Lake City in the district and circuit above named, this 9th day of September, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

WALTER H. SANBORN,
U. S. Circuit Judge.

Service of a copy of the within citation is hereby admitted this 9th day of September, A. D. 1911.

ROBERT S. LOVETT,
Counsel for Respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company.

CRAVATH, HENDERSON & DE GUSDORFF,
Solicitors for Respondents, Jacob H. Schiff & Otto H. Kahn.

WALKER D. HINES,
Solicitor for Respondent, Atchison, T. & S. F. Ry. Co.

JAMES M. BECK,
Solicitor for James Stillman and Estate of H. H. Rogers, deceased.

TURNER, RALSTON & HORAN,
Solicitors for the Farmers' Loan and Trust Co., Defendants.

D. T. WATSON,
Solicitor for Respondent Henry C. Frick.

CHARLES W. BUNN,
Counsel for Northern Pacific Railway Company.

E. C. LINDLEY,
Solicitor for Great Northern Railway Co.

A. S. HALSTED,
Solicitor for W. A. Clark and San Pedro, Los Angeles & Salt Lake R. R. Co.

363 (Indorsed:) United States Circuit Court. District of Utah, 8th Circuit. The United States of America against the Union Pacific Railroad Co. et al. Citation. Original.

364 In the United States Circuit Court for the District of Utah.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* UNION PACIFIC RAILROAD COMPANY ET AL., defendants.	No. 993. In equity.

UNITED STATES OF AMERICA,
District of Utah, ss:

I, Jerrold R. Letcher, clerk of the United States Circuit Court for the District of Utah, hereby certify that the foregoing printed volumes, numbered—

A. (Vol. XII.) Pleadings (pages 1–284, inclusive);

B. (Vol. I.) Evidence & Proceedings before Special Examiner (pages 1–506, inclusive, complainant);
C. (Vol. II.) Evidence & Proceedings before Special Examiner (pages 507 to 934, inclusive, complainant);
D. (Vol. III.) Evidence & Proceedings before Special Examiner (pages 935 to 1433, inclusive, complainant);
E. (Vol. IV.) Evidence & Proceedings before Special Examiner (pages 1434 to 1896, inclusive, complainant);
F. (Vol. V.) Evidence & Proceedings before Special Examiner (pages 1897 to 2354, inclusive, complainant);
G. (Vol. VI.) Evidence & Proceedings before Special Examiner (pages 2355 to 2898, inclusive, complainant);
H. (Vol. VII.) Evidence & Proceedings before Special Examiner (pages 2899 to 3467, inclusive, complainant);
I. (Vol. VIII.) Evidence & Proceedings before Special Examiner (pages 3469 to 3884, inclusive, defendants);
J. (Vol. IX.) Evidence & Proceedings before Special Examiner (pages 3885 to 4402, inclusive, defendants);
K. (Vol. X.) Evidence & Proceedings before Special Examiner (pages 4403 to 4881, inclusive, defendants);
L. (Vol. XI.) Evidence & Proceedings before Special Examiner (pages 4883 to 5124, inclusive, complainant's rebuttal and general index);

Together with—

1. Certificate and report of special examiner;
2. Order in re publication of proofs;
365 3. Order, setting cause for trial;
4. Statement of case and opinion of trial court;
5. Opinion of Hon. Wm. C. Hook, circuit judge, dissenting;
6. Decree, dismissing bill;
7. Petition for appeal, by complainant;
8. Assignment of errors;
9. Order allowing appeal;
10. Stipulation as to use of printed copies of testimony and proceedings—

constitute a full, true, and complete transcript of all records and proceedings on file in my office in the above-entitled cause, made pursuant to stipulation of the parties thereto and the order of court thereon.

I further certify that the original citation in said cause is hereto attached and returned with this transcript of the record.

In testimony whereof I have hereunto set my hand as clerk and affixed the seal of said court at Salt Lake City, in said district, this 27th day of September, A. D. 1911, and of the independence of the United States of America the 136th year.

[SEAL.] JERROLD R. LETCHER, *Clerk.*

(Indorsement on cover:) File No. 22896. Utah. C. C. U. S. Term No., 820. The United States of America, appellant, vs. The Union Pacific Railroad Company et al. Filed October 9th, 1911. File No., 22896.

O

CHARTS

TOO

LARGE

FOR

FILMING